code of federal regulations

GS 4.108: 44/981 MF

Emergency Management and Assistance

ORIGINAL
COMPLETED

44

Revised as of October 1, 1981

022-003-94673-0

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

code of federal regulations

Emergency Management and Assistance

44

Revised as of October 1, 1981

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1981

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records Service
General Services Administration

as a Special Edition of
the Federal Register

1934

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1981

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

MICROFICHE (24X)

SUBSCRIPTION PRICE: DOMESTIC-- $225.00 A YEAR,
$ 2,25 SINGLE COPY
FOREIGN -- $280.00 A YEAR
$ 2.85 SINGLE COPY

Table of Contents

Page

Explanation v

Title 44:

Chapter I—Federal Emergency Management Agency 3

Chapter IV—Department of Commerce and Department of Transportation 459

Finding Aids:

Table of CFR Titles and Chapters 467

Alphabetical List of Agencies Appearing in the CFR 481

Redesignation Tables 489

Table 1—Regulations Formerly Appearing in Title 44, Public Property and Works 499

Table 2—Regulations Transferred to Title 44, Emergency Management and Assistance 501

List of CFR Sections Affected 515

Cite this Code C F R

thus: 44 CFR 1.1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..as of January 1
Title 17 through Title 27..as of April 1
Title 28 through Title 41..as of July 1
Title 42 through Title 50..as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1981), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised semiannually as of January 1 and July 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

THIS TITLE

Title 44—EMERGENCY MANAGEMENT AND ASSISTANCE is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of October 1, 1981.

Redesignation tables for Chapter I—Federal Emergency Management Agency, appear in the Finding Aids section of this volume.

The appendices, carried in the Finding Aids section of this volume, contain the codification lists of the regulations issued prior to redesignation and transfer from other titles to Title 44.

For this volume Denise L. Landon was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

New Publication

List of CFR Sections Affected

(1964 through 1972)

A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 through 27) $15.00
Volume II (Titles 28 through 50) $14.00

ORDER FORM Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ ________ ☐ check,
☐ money order, or charge to my
Deposit Account No.
☐☐☐☐☐☐☐–☐

Order No. ______________

VISA®

MasterCard

Credit Card Orders Only

Total charges $________ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me____copies of the CODE OF FEDERAL REGULATIONS
Volume I $15.00 Stock No. 022-003-94233-5
Volume II $14.00 Stock No. 022-003-94234-3

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity		Charges
________	Enclosed	
________	To be mailed	
	Subscriptions	
Postage		
Foreign handling		
MMOB		
OPNR		
________	UPNS	
________	Discount	
________	Refund	

would you like to know

if any changes have been made in these regulations since the revision date of this book without reading the FEDERAL REGISTER every day? If so, you **may wish to subscribe to the LSA (List of CFR Sections Affected.).**

LSA (List of CFR Sections Affected)

$10.00
per year

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register, and is issued monthly in cumulative form. Entries indicate the nature of the changes.

Also available on a subscription basis . . .

Federal Register Index **$8.00**
per year

Indexes covering the contents of the daily Federal Register are issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers: FR Indexes and the LSA (List of CFR Sections Affected) will continue to be mailed free of charge to regular FR subscribers.

Mail order form to:
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed $________ for ________ subscription(s) to the publications checked below:

.... **LSA (LIST OF CFR SECTIONS AFFECTED) ($10.00 a year domestic; $12.50 foreign)**

.... **FEDERAL REGISTER INDEX ($8.00 a year domestic; $10.00 foreign)**

Name____

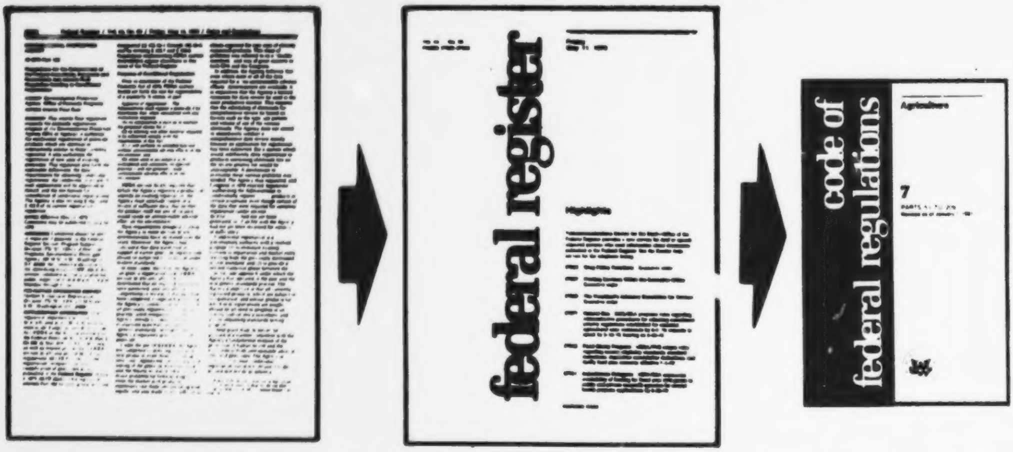
Street Address____

City____________________ **State**____________________ **ZIP**____________________

Make check payable to the Superintendent of Documents

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps people up to date on the Federal regulations currently in effect.

The **Federal Register** contains many reader's aids—Highlights, Grant Information, list of hearings and Sunshine meetings—which simplify the user's job.

The **Code of Federal Regulations** (CFR) contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Subscription Prices:

Federal Register	**Code of Federal Regulations**
One year: $75 domestic; $145 foreign	One year: $525 domestic; $656.25 foreign
Six months: $45 domestic; $90 foreign	Single volumes: Individually priced.

ORDER FORM Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ ________ ☐ check, ☐ money order, or charge to my Deposit Account No.
☐☐☐☐☐☐☐–☐
Order No. ____________

VISA

Credit Card Orders Only
Total charges $ ________ Fill in the boxes below.
Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
Expiration Date Month / Year ☐☐☐☐

Please send me

. . . . **Federal Register:** $75 per year domestic; $145 foreign
$45 per six-month domestic; $90 foreign

. . . . **Code of Federal Regulations:** $525 per year domestic; $656.25 foreign

Name—First, Last
Company name or additional address line
Street address or additional address line
City **State** **ZIP Code**
(or Country)
PLEASE PRINT OR TYPE

FOR OFFICE USE ONLY
Quantity Charges
Enclosed
To be mailed
Subscriptions
Postage
Foreign handling
MMOB
OPNR
UPNS
Discount
Refund

Title 44—Federal Emergency Management and Assistance

	Part
CHAPTER I—Federal Emergency Management Agency	1
CHAPTER IV—Department of Commerce and Department of Transportation	401

BLANK PAGE

CHAPTER I—FEDERAL EMERGENCY MANAGEMENT AGENCY

SUBCHAPTER A—GENERAL

Part | | *Page*
0 General statements of policy [Reserved]
1 Rulemaking; policy, and procedures 7
2 Organization, functions, and delegations of authority 13
3 Standards of conduct 26
4 Security [Reserved]
5 Production or disclosure of information 49
6 Implementation of the Privacy Act of 1974 60
7 Nondiscrimination in Federally-assisted programs (FEMA Reg. 5) 77
8 Equal Employment Opportunity [Reserved]
9 Floodplain management and protection of wetlands 85
10 Environmental considerations 105
11 Claims 113
12 Advisory Committees 122
13—49 [Reserved]

SUBCHAPTER B—FEDERAL INSURANCE ADMINISTRATION

50—54 [Reserved]

National Insurance Development Program

55 Statewide "FAIR" Plans 130
56 Standard reinsurance contract 138
57 State reimbursement requirement 147
58 [Reserved]

National Flood Insurance Program

59 General provisions 148
60 Criteria for land management and use 162
61 Insurance coverage and rates 176
62 Sale of insurance and adjustment of claims 194

Part | Page
63 [Reserved]
64 Communities eligible for the sale of insurance 197
65 Identification and mapping of special hazard areas 200
66 Consultation with local officials 202
67 Appeals from proposed flood elevation determinations 204
68 Administrative hearing procedures 206
69 [Reserved]
70 Procedure for map correction 207
71—74 [Reserved]
75 Exemption of State-owned properties under self insurance plan 209
76 State assistance program for the National Flood Insurance Program 212
77 Acquisition of flood damaged structures 216
78—79 [Reserved]

FEDERAL CRIME INSURANCE PROGRAM

80 Description of program and offer to agents 219
81 Purchase of insurance and adjustment of claims 223
82 Protective device requirements 227
83 Coverages, rates, and prescribed policy forms 232
84 Classification of territories 251
85—149 [Reserved]

SUBCHAPTER C—FIRE PREVENTION AND CONTROL

150 Public safety awards to public safety officers 258
151 Reimbursement for costs of firefighting on Federal property 261
152—199 [Reserved]

SUBCHAPTER D—DISASTER ASSISTANCE

200 Federal Disaster Assistance (Public Law 91-606) 267
201 Reimbursement of other Federal agencies under Public Law 91-606 285
205 Federal Disaster Assistance (Public Law 93-288) 287
206 Temporary housing pre-termination procedure 361
207—299 [Reserved]

SUBCHAPTER E—PREPAREDNESS

300 Disaster preparedness assistance 364
301 Contributions for Civil Defense equipment 369

Part		Page
302	Civil Defense—State and local emergency management assistance program (contributions for personnel and administrative expenses)	374
303	Procedure for witholding payments for financial contributions under the Federal Civil Defense Act	396
304	Consolidated grants to insular areas	397
305	Reimbursement toward expenses of students attending FEMA schools	398
306	Official Civil Defense insigne	399
307	Nondiscrimination in Federally assisted programs of the Federal Emergency Management Agency	402
308	Labor standards for Federally assisted contracts	405
309	Federally assisted construction	412
310	Organization, activities, and general statements of policy	416
311	Federal employee emergency identification card	418
312—319	[Reserved]	
320	Dispersion and protective construction: policy, criteria, responsibilities (DMO-1)	421
321	Maintenance of the mobilization base (Department of Defense, Department of Energy, Maritime Administration)	423
322	Defense production: priorities and allocations authority (DMO-3)	425
323	Guidance on priority use of resources in immediate post attack period (DMO-4)	427
324	National security policy governing scientific and engineering manpower (DMO-5)	433
325	Emergency health and medical occupations	434
326	Policy guidance for a national emergency blood program (DMO-7)	436
327	Policy on use of Government-owned industrial plant equipment by private industry (DMO-10A)	438
328	General policies for strategic and critical materials stockpiling (DMO-11)	439
329	Use of priorities and allocation authority for Federal supply classification (FSC) common use items (DMO-12)	441
330	Policy guidance and delegation of authorities for use of priorities and allocations to maximize domestic energy supplies in accordance with subsection 101(c) of the Defense Production Act of 1950, as amended (DMO-13)	442

Part *Page*

331 Preservation of the mobilization base through the placement of procurement and facilities in labor surplus areas 444
332 Voluntary agreements under section 708 of the Defense Production Act of 1950, as amended 445
333-350 [Reserved]
351 Radiological emergency response planning and preparedness 448
352-359 [Reserved]
360 State assistance programs for training and education in comprehensive emergency management .. 454
361-399 [Reserved]

SUBCHAPTER A—GENERAL

PART 0—GENERAL STATEMENTS OF POLICY [RESERVED]

PART 1—RULEMAKING; POLICY AND PROCEDURES

Subpart A—General

Sec.
1.1 Purpose.
1.2 Definitions.
1.3 Scope.
1.4 Policy and procedures.
1.5 Rules docket.
1.6 Ex parte communications.
1.7 Regulations agendas.
1.8 Regulations review.
1.9 Regulatory impact analyses.

Subpart B—Procedures for Rulemaking

1.10 Initiation of rulemaking.
1.11 Advance notice of proposed rulemaking.
1.12 Notice of proposed rulemaking.
1.13 Participation by interested persons.
1.14 Additional rulemaking proceedings.
1.15 Hearings.
1.16 Adoption of a final rule.
1.17 Petitions for reconsideration.
1.18 Petition for rulemaking.

AUTHORITY: 5 U.S.C. 551, 552, 553; 5 U.S.C. 601, *et seq.;* EO 12291. Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 46 FR 32584, June 24, 1981, unless otherwise noted.

Subpart A—General

§ 1.1 Purpose.

(a) This part contains the basic policies and procedures of the Federal Emergency Management Agency (FEMA) for adoption of rules. These policies and procedures incorporate those provisions of Section 4 of the Administrative Procedures Act (APA) (5 U.S.C. 553) which FEMA will follow. This part and internal FEMA Manuals implement Executive Order 12291.

(b) Rules which must be published are described in Section 3 of the APA, 5 U.S.C. 552(a). FEMA implementation of paragraph (a), is contained in 44 CFR Part, 5 Subpart B.

(c) This part contains policies and procedures for implementation of the Regulatory Flexibility Act which took effect January 1, 1981.

(d) A FEMA Manual No. 1140.1, "The Formulation, Drafting, Clearance, and Publication of FEDERAL REGISTER Documents" will be prepared describing the internal procedures including policy level oversight of FEMA for:

(1) Publishing the semiannual agenda of significant regulations under development and review;

(2) Making initial determinations with respect to significance of proposed rulemaking;

(3) Determining the need for regulatory analyses; and

(4) Reviewing existing regulations, including the reviews required by the Regulatory Flexibility Act.

(e) As the proposed FEMA Manual deals with internal management it is not subject to the requirements either of 5 U.S.C. 552 or 5 U.S.C. 553. Its provisions are not part of this rule and reference to it is informative only.

§ 1.2 Definitions.

(a) "Rule" or "regulation" means the whole or a part of any agency statement of general applicability and future effect designed to (1) implement, interpret, or prescribe law or policy, or (2) describe procedures or practice requirements. It includes any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, of allowances. For purposes of this part the term "rule" does not include regulations issued with respect to a military or foreign affairs function of the United States.

(b) "Rulemaking" means the FEMA process for considering and formulating the issuance, amendment or repeal of a rule.

(c) "Director" means the Director, FEMA, or an official to whom the Director has expressly delegated authority to issue rules.

(d) "FEMA" means Federal Emergency Management Agency.

(e) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

§ 1.3 Scope.

(a) This part prescribes general rulemaking procedures for the issuance, amendment, or repeal of rules in which participation by interested persons is required by 5 U.S.C. 553 or other statutes, by Executive Order 12291, by FEMA policy, or by § 1.4 of this part.

(b) Any delegation by the Director of authority to issue rules may not be further redelegated, unless expressly provided for in the delegation.

(c) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 1.4 Policy and procedures.

(a) In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, FEMA, to the extent permitted by law, shall adhere to the following requirements:

(1) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(2) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(3) Regulatory objectives shall be chosen to maximize the net benefits to society;

(4) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(5) FEMA shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular entities affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

(b) It is the policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though these matters are not subject to a requirement for notice and public comment rulemaking by law.

(c) FEMA will publish notices of proposed rulemaking in the FEDERAL REGISTER and will give interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation.

(d) In order to give the public, including small entities and consumer groups, an early and meaningful opportunity to participate in the development of rules, for a number of regulations the Director will employ additional methods of inviting public participation. These methods include, but are not limited to, publishing advance Notices of Proposed Rulemaking (ANPR), which can include a statement with respect to the impact of the proposed rule on small entities; holding open conferences; convening public forums of panels, sending notices of proposed regulations to publications likely to be read by those affected and soliciting comment from interested parties by such means as direct mail. An ANPR should be used to solicit public comment early in the rulemaking process for significant rules.

(e) It is the policy of FEMA that its notices of proposed rulemaking are to afford the public at least sixty days for submission of comments unless the Director makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking. This period shall also include any period of review required by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

(f) Unless required by statute or Executive Order, notice and public procedure may be omitted if the Director, for good cause, determines in a particular case or class of cases that notice and public procedure is impractical, unnecessary or contrary to the public interest and sets forth the reason for the determination in the rule or, for a class of cases, in a published rule or statement of policy. In a particular case, the reasons for the determination will be stated in the rulemaking document. Notice and public procedure may also be omitted with respect to statements of policy, interpretative rules, rules governing FEMA's organization or its own internal practices or procedures, or if a statute expressly authorizes omission.

(g) A final substantive rule will be published not less than 30 days before its effective date unless it grants or recognizes an exemption or relieves a restriction or unless the rule itself states good cause for its taking effect less than 30 days after publication. Statements of policy and interpretative rules will usually be made effective on the date of publication.

(h) This part shall not apply to any regulation that responds to an emergency situation, provided that, any such regulation shall be reported to the Director, Office of Management and Budget, as soon as is practicable. FEMA shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to such a rule, and the agency shall prepare and transmit, if needed, as soon as is practicable a Regulatory Impact Analysis of any such major rule.

§ 1.5 Rules docket.

(a) Documents which are public records and which are a part of a specific rulemaking procedure, including but not limited to, advance notices of proposed rulemaking, notices of proposed rulemaking, written comments addressed to the merits of a proposed rule, and comments received in response to notices, or withdrawals or terminations of proposed rulemaking, petitions for rulemaking, requests for oral argument in public participation cases, requests for extension of time, grants or denials of petitions or requests, transcripts or minutes of informal hearings, final rules and general notices shall be maintained in the Rules Docket Room. All public rulemaking comments should refer to the docket number which appears in the heading of the rule and should be addressed to the Rule Docket Clerk, Federal Emergency Management Agency, at the address shown in the heading.

(b) Documents which are a part of a specific rulemaking proceeding are public records. After a docket is established, any person may examine docketed material at any time during established hours of business and may obtain a copy of any docketed material upon payment of the prescribed fee. (See Part 5 of this chapter.)

§ 1.6 Ex parte communications.

In rulemaking proceedings subject only to the procedural requirements of 5 U.S.C. 553:

(a) All oral communications from outside FEMA of significant information and argument respecting the merits of a proposed rule, received after notice of proposed informal rulemaking and in its course by FEMA or its offices and divisions or their personnel participating in the decision, should be summarized in writing and placed promptly in the Rules Docket File available for public inspection.

(b) FEMA may conclude that restrictions on ex parte communications in particular rulemaking proceedings are necessitated by consideration of fairness or for other reasons.

§ 1.7 Regulations agendas.

(a) The FEMA semiannual agenda called for by Executive Order 12291 shall be published by FEMA on or about April 15 and October 15 each year.

(b) In accordance with 5 U.S.C. 605, the regulatory flexibility agenda required by 5 U.SC. 602 and the list of rules, if any, to be reviewed pursuant to 5 U.S.C. 610 shall be included in the FEMA semiannual agenda described in paragraph (a) of this section.

(c) The semiannual agenda shall, among other items, include:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking.

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of the Order and a brief discussion of each such regulation.

§ 1.8 Regulations review.

(a) As part of the semiannual agenda described in §1.7 of this part, FEMA will publish in the FEDERAL REGISTER and keep updated a plan for periodic review of existing rules at least within 10 years from date of publication of a rule as final. This includes those that have significant impact on a substantial number of small entities.

(b) The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, including minimizing any significant economic impact of the rules upon a substantial number of small entities.

(c) In reviewing rules FEMA shall consider the following factors:

(1) The continued need for the rule;

(2) The nature, type and number of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule, including need for review of language for clarity;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

§ 1.9 Regulatory impact analyses.

(a) FEMA shall, in connection with any major rule, prepare and consider a Regulatory Impact Analysis. Such analysis may be combined with the Regulatory Flexibility Analysis described in §§ 1.12(f) and 1.16(c) of this part.

(b) FEMA shall initially determine whether a rule it intends to propose or to issue is a major rule and, if a major rule, shall prepare Regulatory Impact Analyses and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director, Office of Management and Budget, as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director, Office of Management and Budget, at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, FEMA shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director, Office of Management and Budget, at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmited along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, FEMA shall, unless an exemption has been granted, submit to the Director, Office of Management and Budget, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(c) To permit each major rule to be analyzed in light of the requirements stated in Section 2 of Executive Order 12291, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (c)(4) of this section, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of Executive Order 12291.

Subpart B—Procedures for Rulemaking

§ 1.10 Initiation of rulemaking.

Rulemaking may be initiated on the Director's motion or upon motion of an official to whom rulemaking authority has been delegated. Rulemaking may also be initiated on the petition of any interested person in accordance with the provisions of § 1.18. Interested person includes a Federal, State, or local government or government agency.

§ 1.11 Advance notice of proposed rulemaking.

An Advance Notice of Proposed Rulemaking will be published in the FEDERAL REGISTER and contains:

(a) A description of the proposed new program or program changes, and why they are needed;

(b) A presentation of the major policy issues involved;

(c) A request for comments, both specific and general, or the need for the proposed rule and the provisions that the rule might include;

(d) If appropriate, a list of questions about the proposal which seeks to bring out detailed comments;

(e) If known, an estimate of the reporting or recordkeeping requirements, if any, that the rule would impose; and

(f) An address to which comments may be, and the time within which they may be submitted.

§ 1.12 Notice of proposed rulemaking.

Each notice of proposed rulemaking required by statute, executive order, or by § 1.4 will be published in the FEDERAL REGISTER and will include:

(a) The substance or terms of the proposed rule or a description of the subject matter and issues involved.

(b) A statement of how and to what extent interested persons may participate in the proceeding.

(c) Where participation is limited to written comments, a statement of the time within which such comments must be submitted.

(d) A reference to the legal authority under which the proposal is issued.

(e) In a proceeding which has provided Advance Notice of Proposed Rulemaking, an analysis of the principal issues and recommendations raised by the comments, and the manner in which they have been addressed in the proposed rulemaking.

(f)(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination;

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis; and

(3) The initial regulatory flexibility analysis or a summary thereof as required by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or a certification that the rule, if promulgated, will not have a significant economic impact or a significant number of small entities pursuant to 5 U.S.C. 605. Such certification may be made by any FEMA official with rulemaking authority.

(g) It is desirable, but not required, that the notices contain a target deadline for issuance of the regulation, and that to the extent feasible, this deadline be met.

(h) If the rule is one which contains a requirement for collection of information, a copy of the rule will be furnished OMB in accordance with 44 U.S.C. 3504(h).

§ 1.13 Participation by interested persons.

(a) Unless the notice otherwise provides, any interested person may participate in rulemaking proceedings by submitting written data, views or arguments within the comment time stated in the notice. In addition, the Director may permit the filing of comments in response to original comments.

(b) In appropriate cases, the Director may provide for oral presentation of views in additional proceedings described in § 1.14.

(c) Copies of regulatory flexibility analyses shall be furnished the Chief Counsel for Advocacy of the Small Business Administration.

§ 1.14 Additional rulemaking proceedings.

The Director may invite interested persons to present oral arguments, appear at informal hearings, or participate in any other procedure affording opportunity for oral presentation of views. The transcript or minutes of such meetings, as appropriate, will be kept and filed in the Rules Docket.

§ 1.15 Hearings.

(a) The provisions of 5 U.S.C. 556 and 557, which govern formal hearings in adjudicatory proceedings, do not apply to informal rulemaking proceedings described in this part. When opportunity is afforded for oral presentation, the informal "hearing" is a nonadversary, fact-finding proceeding. Any rule issued in a proceeding under this part in which a hearing is held need not be based exclusively on the record of such hearing.

(b) When a hearing is provided, the Director will designate a representative to conduct the hearing.

§ 1.16 Adoption of a final rule.

(a) All timely comments will be considered in taking final action on a proposed rule. Each preamble to a final rule will contain a short analysis and evaluation of the relevant significant issues set forth in the comments submitted, and a clear concise statement of the basis and purpose of the rule.

(b) When determined necessary by the Director in accordance with the provisions of 1 CFR 18.12, the preamble shall contain the following information:

(1) A discussion of the background and major issues involved;

(2) In the case of a final rule, any significant differences between it and the proposed rule;

(3) A response to substantive public comments received; and

(4) Any other information the Director considers appropriate.

(c) At the time of publication of the final rule, a statement shall be published describing how the public may obtain copies of the final regulatory flexibility analysis which must be prepared in accordance with 5 U.S.C. 604 unless the procedure for waiver or delay of completion under 5 U.S.C. 608 is followed.

(d) Before approving any final major rule FEMA will:

(1) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent and include in the FEDERAL REGISTER at the time of promulgation a memorandum of law supporting that determination; and

(2) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

§ 1.17 Petitions for reconsideration.

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with § 1.18.

§ 1.18 Petition for rulemaking.

(a) Any interested person may petition the Director for the issuance, amendment, or repeal of a rule. For purposes of this section the term "person" includes a Federal, State or local government or government agency. Each petition shall:

(1) Be submitted to the Rules Docket Clerk;

(2) Set forth the substance of the rule or amendment proposed or specify the rule sought to be repealed or amended;

(3) Explain the interest of the petitioner in support of the action sought; and

(4) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) No public procedures will be held directly on the petition before its disposition. If the Director finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate. If the Director finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Director may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Subpart A—Organization and Functions

GENERAL

Sec.
2.1 Purpose.
2.2 Organization of FEMA.

FEMA OFFICES

2.10 Office of Director.
2.11 Office of Disaster Response and Recovery (DR&R).
2.12 Office of Mitigation and Research.
2.13 Office of Plans and Preparedness.
2.14 Federal Insurance Administration.
2.15 United States Fire Administration.
2.16 Training and Education Office.
2.17 Office of Finance and Administration.
2.18 Office of Operations Support.
2.19 Office of Personnel.
2.20 Office of Program Analysis and Evaluation.
2.21 Office of the General Counsel.
2.22 Office of the Inspector General.
2.23 Regional Offices.

FEMA LOCATIONS

Sec.
2.30 FEMA Headquarters.
2.31 FEMA Regions.

Subpart B—Delegations

GENERAL

2.50 Purpose.
2.51 Exercise of Authority.
2.52 General Limitations and Reservations.
2.53 Delegations not included.
2.54 Redelegations of authority.
2.55 General Delegations.
2.56 Designation of Subordinates to Act.

DELEGATIONS TO SPECIFIC OFFICES

2.60 Deputy Director. [Reserved]
2.61 Associate Director, Disaster Response and Recovery.
2.62 Associated Director, Mitigation and Research.
2.63 Associated Director, Plans and Preparedness.
2.64 Federal Insurance Administrator.
2.65 United States Fire Administrator.
2.66 Assistant Director for Training and Education.
2.67 Director, Office Finance and Administration.
2.68 Director, Office of Operations Support.
2.69 General Counsel.
2.70 Inspector General.
2.71 Regional Directors.

AUTHORITY: 5 U.S.C. 552; Sec. 106, Reorganization Plan No. 3 of 1978; Executive Order 12127 of March 31, 1979; Executive Order 12148 of July 10, 1979, as amended.

SOURCE: 45 FR 41421, June 19, 1980, unless otherwise noted.

Subpart A—Organization and Functions

GENERAL

§ 2.1 Purpose.

This part describes the organization of the Federal Emergency Management Agency (FEMA), and the general course and method by which its functions are channeled and determined. It provides for the exercise by officials of FEMA of authorities which are vested in the Director specifically by statute, as head of an agency, or as a consequence of a law authorizing such exercise. It also provides for exercise of authorities which have been transferred to the Director by Reorganization

Plan or delegated to the Director by Executive Order.

§ 2.2 Organization of FEMA.

(a) The Director is the head of FEMA. All authorities of FEMA are either vested in the Director, or have been transferred to or delegated to the Director. Notwithstanding any delegation by the Director to a subordinate officer of FEMA, the Director may exercise such authority.

(b) FEMA is composed of the Administrations and Offices, the responsibilities of which are described in §§ 2.10-2.23.

FEMA OFFICES

§ 2.10 Office of the Director.

The Office of the Director consists of the immediate office of the Director, and in addition the following offices which perform the indicated functions:

(a) *Congressional Relations Office.* Serves as principal point of contact between FEMA and members of Congress, its committees and staffs.

(b) *International Affairs Office.* Serves as principal staff advisor to the Director on policy and programs involving international civil emergency activities.

(c) *Public Affairs Office.* Provides staff assistance to the Director of FEMA for public information programs and coordinates FEMA's relationships with constituency groups.

(d) *Regional Coordination Office.* Serves as liaison between Regional Directors and headquarters program and staff offices. Monitors regional activities and advises and assists the Director in development and implementation of regional operating policies.

(e) *Equal Opportunity Office.* Advises the Director on the scope and coverage of the FEMA equal opportunity program, develops agency affirmative action plans, and conducts reviews and evaluations of program implementation.

§ 2.11 Office of Disaster Response and Recovery (DR&R).

The DR&R office administers authorities contained in the Disaster Relief Acts of 1970 and 1974. It is responsible for monitoring, and providing advice and guidance on situations which may result in requests to the President for Federal major disaster or emergency assistance. DR&R is responsible for assuring that appropriate plans, systems and procedures are in effect to accomplish coordination of all Federal agencies operating in disaster or emergency areas. The Office administers programs of assistance to State and local governments, private, non-profit institutions, other eligible groups and to individuals in declared disasters or emergencies. It conducts post-disaster critiques to evaluate the effectiveness of Federal response and coordination and to identify areas requiring improvement in Federal-State response and recovery relationships. The Office is headed by the Associate Director, Disaster Response & Recovery.

§ 2.12 Office of Mitigation and Research.

The Mitigation and Research Office administers authorities contained in the Earthquake Hazards Reduction Act of 1977 and hazard mitigation activities authorized by other statutes administered by FEMA. It conducts FEMA activities connected with dam safety. The objective of mitigation and research is to increase the capability of the United States to predict, prevent or respond to emergencies and disasters and to recover from their impact. The Office develops and manages the FEMA research and development programs dealing with attack prepardness, the mobilization base, major natural and technological hazards, and technical, managerial, and economic and sociological factors which affect hazard mitigation and emergency management activities. The Office is headed by the Associate Director, Mitigation and Research.

§ 2.13 Office of Plans and Preparedness.

(a) The Plans and Preparedness Office administers authorities contained in the National Security Act, the Strategic and Critical Materials Stock Piling Act, the Federal Civil Defense Act of 1950, as amended, the Defense Production Act of 1950, as amended, and section 201 of the Disaster Relief Act of 1974, as amended.

(b) This Office develops and implements plans, policies, concepts, and procedures related to peacetime and wartime emergencies; to include warning, communications, population relocation and protection and damage assessment. This includes Federal agency responsibility for offsite emergency planning and preparedness around nuclear facilities. It is responsible for the development, coordination, and maintenance of plans to assure continuity of the Federal Government in a wide range of emergency situations, including the coordination of the response to the consequences of major terrorist incidents. It develops plans for the protection of industry, for resource assessments, resource management, post-attack economic recovery, and for stabilization of the economy in an emergency, including policy guidance for stockpiling of strategic materials. The Office is also responsible for the development and conduct of, and participation in, exercises at all levels to test the validity of emergency concepts and plans. The Office is headed by the Associate Director for Plans and Preparedness.

§ 2.14 Federal Insurance Administration.

The Federal Insurance Administration (FIA) is responsible for carrying out activities under the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, and the Urban Property Protection and Reinsurance Act of 1968, as amended. It administers the National Flood Insurance Program, which makes flood insurance available in communities that adopt and enforce floodplain management regulations that protect life and new construction from future floods. The Federal Insurance Administration provides communities that participate in approved FAIR (Fair Access to Insurance Requirements) property insurance pools. FAIR Plans make essential property insurance available for properties meeting reasonable underwriting standards. The Federal Insurance Administration also provides robbery and burglary insurance under the Federal Crime Insurance Program to individuals and businesses in States where crime insurance is difficult to obtain or is not affordable in the private market. FIA is headed by the Federal Insurance Administrator.

§ 2.15 United States Fire Administration.

The United States Fire Administration (USFA) administers authorities contained in the Federal Fire Prevention and Control Act of 1974, the goal of which is to reduce national fire loss. The United States Fire Administration conducts and provides support to training and planning and education efforts directed to fire service and other Federal, State and local government personnel and to the public at large. This is done through the United States Fire Academy in Emmitsburg, Maryland, and through the development and dissemination of training and instructional materials. It supports, through the Fire Research Center at the National Bureau of Standards, work directed to decreasing fire-caused deaths, injuries and economic losses, and to improve the effectiveness of fire protection. The United States Fire Administration maintains a national fire data center to collect, assess and disseminate information in a standard format to assist in decision-making on the nature of the fire problem and alternative strategies for reducing losses. USFA provides FEMA representation on the Interagency Emergency Medical Services Committee. The Administration is headed by the United States Fire Administrator.

§ 2.16 Training and Education Office.

The Training and Education Office defines, in cooperation with FEMA program offices, the Agency training and education requirements, and directs the development of appropriate training and education materials and deployment systems. It designs and manages training and education activities for FEMA's operating programs, evaluates the effectiveness of FEMA training and education activities and develops appropriate recommendations for change. The Office also directs the operations of the Emergency Management Institute which provides in-residence training in civil management preparedness activities to Federal and State and local government officials. The Office is headed by the Assistant Director for Training and Education.

§ 2.17 Office of Finance and Administration.

The Office of Finance and Administration develops and operates financial management, acquisition and administrative services systems. It formulates agency policies and principles governing the establishment of budgetary, accounting and financial management systems within the agency, including inventory accounting and pricing goods and services furnished; exercises necessary controls to ensure compliance with agency financial policies, plans and principles; and coordinates the agency's financial programs with the Office of Management and Budget, other Federal agencies, and Congressional appropriations committees. The Office is headed by the Director of Finance and Administration.

§ 2.18 Office of Operations Support.

The Office of Operations Support develops and operates telecommunications, warning, electronic and computational systems to support FEMA's mission. It operates facilities and systems to support Federal continuity of government programs. It maintains the FEMA Operations Center. The Office is headed by the Director of Operations Support.

§ 2.19 Office of Personnel.

The Personnel Office develops, implements and manages FEMA's personnel programs, including position management, classification, recruitment, placement, salary administration, labor management relations, performance evaluation, incentive awards, discipline, training and career development records, and reports employee services and, in conjunction with the Equal Opportunity Office, equal employment opportunity. The Office is headed by the Director of Personnel.

§ 2.20 Office of Program Analysis and Evaluation.

This office supports the Director in policy and program development and analysis and in the development and analysis of program performance criteria. It is headed by the Director, Program Analysis and Evaluation.

§ 2.21 Office of the General Counsel.

This office provides legal advice to the Director and agency staff on FEMA duties, authorities, statutes, rules and regulations, and administrative procedure. It prepares and coordinates all Agency appearances in litigation or administrative proceedings and determines the agency legal position with respect to all matters. Reviews for legal sufficiency and transmits to FEDERAL REGISTER all regulations. This office is headed by the General Counsel.

§ 2.22 Office of the Inspector General.

This office plans, supervises and coordinates internal and external audit, investigation and security activities relating to FEMA programs and operations. It recommends policies to promote efficiency and to prevent and detect fraud and abuse. This Office is headed by the Inspector General.

§ 2.23 Regional offices.

The ten FEMA regional offices are the primary source through which the Agency's programs are administered at the State and local level. The Regional Directors are the FEMA Director's principal representatives in contacts and relationships with Federal, regional, State and local agencies, industry and other public and private groups. They are responsible for accomplishing within their regions the national program objectives established by the Agency. They perform the duties delegated to them in § 2.71.

FEMA LOCATIONS

§ 2.30 FEMA headquarters.

The Office of the Director, FEMA, is located at 1725 I Street, NW, Washington, DC. 20472.

§ 2.31 FEMA regions.

The Regional Offices of FEMA are located as follows:

Region and Address

I, 442 J.W. McCormack, Boston, MA 02109.
II, 26 Federal Plaza, Room 1349, New York, N.Y. 10007.
III, Curtis Building, 7th Floor, 6th & Walnut Streets, Philadelphia, PA 19106.
IV, Gulf Oil Building, Suite 664, 1375 Peachtree Street N., Atlanta, GA 30309.
V, 1 North Dearborn St., Room 540, Chicago, IL 60602.
VI, Federal Regional Center, Room 206, Denton, TX 76201.
VII, Old Federal Office Building, Kansas City, MO 64106.
VIII, Federal Regional Center Bldg. 710, Denver, CO 80225.
IX, 211 Main Street, Rm. 220, San Francisco, CA 94105.
X, Federal Regional Center, Bothell, WA 98011.

Subpart B—Delegations

GENERAL

§ 2.50 Purpose.

This subpart provides for the exercise of certain of the powers and the performance of certain of the duties which are vested by law in the Director, Federal Emergency Management Agency (FEMA), or which have been transferred to the Director by Reorganization Plan or delegated to the Director by Executive Order.

§ 2.51 Exercise of authority.

Exercise of the authority delegated by this subpart or redelegated pursuant to this subpart is subject to the direction, control, and authority of the Director, and is governed by applicable laws, Executive Orders, Federal agency regulations or issuances applicable to FEMA, regulations issued by FEMA, and by policies, objectives, directives, instructions, plans, standards, procedures and limitations issued from time to time by or on behalf of the Director.

§ 2.52 General limitations and reservations.

(a) All powers and duties that are not delegated by the Director in this subpart, or as otherwise provided in this subpart including § 2.53, are reserved to the Director.

(b) The following specific authorities are reserved to the Director:

(1) Certain authorities relating to reporting to Congress and the President including those under:

(i) Section 16 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2215);

(ii) Section 1320 of the National Flood Insurance Act (42 U.S.C. 4027);

(iii) Section 406 of the Federal Civil Defense Act of 1950, as amended; (50 U.S.C. 2258);

(iv) Section 6 of the Earthquake Hazard Reduction Act of 1979 (42 U.S.C. 7705);

(v) Section 2-105 of Executive Order 12148 dated July 20, 1979;

(2) Authorities connected with declaration of major disasters and emergencies, and with delegations to other agencies including:

(i) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5141(a)).

(ii) The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5141(b)).

(iii) Provision is made in § 2.61 of this part for exercise of the authorities set out in this paragraph when the Director is unavailable.

(iv) Authorities delegated to other agencies of the Federal government. These include those contained in Section 407 and, except as provided in § 2.61(d), those in Section 413.

(3) International preparedness functions.

(4) Authorities relating to voluntary agreements under Section 708 of the Defense Production Act (50 U.S.C. App. 2158) delegated to the Director in Section 501 of Executive Order 10480.

(5) Authority to sue and be sued under Section 402(c)(3) of the Housing Act of 1950 (12 U.S.C. 1749a(c)(3)), applicable under Section 1247 of the National Housing Act (12 U.S.C. 1749bbb-17).

(6) Authority to make the determination concerning federal operation of the program and the report to Congress under Section 1340 of the Na-

tional Flood Insurance Act (42 U.S.C. 4071).

(7) Authority to be sued under Section 1341 of the National Flood Insurance Act (42 U.S.C. 4072).

§ 2.53 Delegations not included.

Other delegations of authority have been and will be made in other FEMA regulations and by internal FEMA directives which concern internal FEMA operations. These are valid delegations. Without in any way limiting the number of those delegations, they include those:

(a) To the Director, Office of Personnel which are considered internal personnel rules and are not published in this part.

(b) To the General Counsel as Ethics Counselor under Part 3 of this subchapter relating to Standards of Conduct and review of financial disclosure statements.

(c) To the Director, Public Affairs, and Regional Directors under parts 5 and 6 of this subchapter relating to the Freedom of Information Act and Privacy Act.

(d) To several officials relating to authentication of records under 44 CFR 5.82.

(e) To the General Counsel with respect to claims under Part 11 of this subchapter.

(f) To classify National Security Information as Top Secret, Secret, or Confidential.

§ 2.54 Redelegations of authority.

(a) Each officer to whom authority is delegated in this part may, unless otherwise specifically provided, redelegate any delegated authority to any officer or employee of FEMA. However, an officer or employee not supervised by the delegating officer may refuse to accept the delegation.

(b) The authority, delegated only to Senate confirmed officials of FEMA, to issue regulations having general applicability and future effect designed to implement, interpret or prescribe law or policy, and which are to be published in the FEDERAL REGISTER may not be redelegated.

§ 2.55 General delegations.

(a) This section sets forth general delegations to the officers or employees named in paragraph (b) of this section.

(b) The officers authorized to exercise authorities in paragraph (c) of this section are:

Federal Insurance Administrator
U.S. Fire Administrator
Associate Director, Plans and Preparedness
Associate Director, Disaster Response and Recovery
Associate Director, Mitigation and Research
Assistant Director for Training and Education
Director, Office of Finance and Administration
Director, Office of Public Affairs
Director, Office of Congressional Relations
Director, Equal Opportunity Office
Director, Regional Coordination
Director, Office of International Affairs
Inspector General
General Counsel
Director, Office of Personnel
Director, Office of Program Analysis and Evaluation
Director, Office of Operations Support
Regional Directors

(c) Each officer named in paragraph (b) of this section is authorized to:

(1) Approve official travel as temporary duty travel on official business on a single trip or blanket authorization basis and allowable expenses incidential thereto for employees of their respective organizational units, in accordance with the Federal Travel Regulations; except that travel to and from points outside of the United States is subject to prior notification to the Director. However, no officer or employee may approve his or her own travel. Travel of officers named in paragraph (b) of this section is approved by the Director or the Director, Finance and Administration.

(2) Approve travel advances of funds through disbursing officers or imprest fund cashiers for employees of the respective organizational unit who are entitled to:

(i) Per diem or mileage allowance or subsistence expenses in accordance with the Federal Travel Regulations; or

(ii) Per diem or mileage allowances, subsistence expenses, temporary storage and transportation of household goods and personal effects, transportation of a house trailer, or transportation and storage of a privately-owned motor vehicle.

(3) Approve travel vouchers for employees of their respective organizational units.

(4) Issue proposed agency decisions on individual complaints of discrimination because of race, color, national origin, religion, sex or age.

(5) Promulgate internal issuances to cover areas of assigned responsibilities consistent with the policy prescribed and instructions issued by the Director.

(6) Approve overtime duty, in excess of an 8-hour day or a 40-hour work week.

(7) Approve compensatory time in lieu of overtime pay when overtime is properly authorized for General Schedule employees whose basic compensation is above the maximum rate of GS-10.

(8) Approve training costing less than $1500 (all expenses) or training less than 80 hours in duration, whichever is the more restrictive except that, this authority does not include authority to approve training involving the use of facilities of foreign governments or international organizations which must be approved by the Director; or the authority to approve acceptance by employees of contributions or awards from non-Government organizations, whether in cash or in kind, which must be approved by the Director.

(9) Adjust working hours for individual employees when there is special justification therefore that it is in the interest of FEMA or to accommodate individual needs of employees for legitimate reasons where the work of the agency will not be impeded.

(10) Approve incentive awards, Public Service Awards, cash awards up to $500 for individuals and quality within-grade salary increases.

(11) Enter into and administer memoranda of understanding with respect to assigned duties.

§ 2.56 Designation of subordinates to act.

Each officer named in § 2.55(b) is authorized to:

(a) Designate one or more subordinate employees to act for such officer during his or her absence.

(b) Designate one or more subordinate employees to serve as acting head of an organizational unit under the officer during the absence of the head of a unit or during a vacancy in the position.

DELEGATIONS TO SPECIFIC OFFICES

§ 2.60 Deputy Director. [Reserved]

§ 2.61 Associate Director, Disaster Response and Recovery.

(a) Except as otherwise provided therein, the Associate Director, Disaster Response and Recovery is authorized to exercise the power and authority of the Director pursuant to 1-102, 4-106, 4-107, 4-201, and 4-202, of Executive Order 12148 of July 20, 1979.

(b) Except as provided in paragraph (c), the Associate Director for Disaster Response and Recovery is authorized to exercise the authorities of the Director pursuant to the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) which were delegated to the Director by Executive Order 12148 of July 20, 1979. See Section 4-203. Excluded from this delegation are those functions vested in the President by section 301 (relating to the declaration of emergencies and major disasters), section 401 (relating to the repair, reconstruction, restoration or replacement of Federal facilities), and section 409 (relating to food coupons and surplus commodities), which authorities were not delegated to the Director.

(c) The following authorities are excluded from the delegation in paragraph (b) of this section and are delegated to other officers of FEMA or are reserved to the Director:

(1) Utilizing or making available to Federal, State and local agencies the facilities of the civil defense communications system pursuant to subsection 201(c) of the Act. See § 2.68(d).

(2) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act. See § 2.52(b)(2)(i).

(3) The authority to make recommendations to the President concern-

ing the issuance of a major disaster declaration pursuant to section 301(b) of the Act. See § 2.52(b)(2)(ii).

(4) The authority contained in section 413 of the Act (with the exception of the authority to provide financial assistance to State or local agencies or private mental health organizations concerning assistance and training). See § 2.52(b)(2)(iv).

(5) The authority contained in section 407 of the Act concerning unemployment assistance. See § 2.52(b)(2)(iv).

(6) The authority under Section 201 relating to establishment of a disaster preparedness program with the exception of the authority to conduct post disaster critiques and evaluations. See § 2.63(c).

(d) In the event that the Director of FEMA, is unavailable, the authority to make the recommendations referred to in paragraphs (c)(2) and (c)(3) of this section, shall be exercised by the Deputy Director FEMA. If both the Director and the Deputy Director are unavailable, said authority shall be exercised by the Associate Director for Disaster Response and Recovery.

(e) The Associate Director for Disaster Response and Recovery is authorized to exercise the power and authority of the Director of FEMA, as head of a Federal agency with respect to Sections 302(b), 306(a) and 309 of the Disaster Relief Act of 1974.

§ 2.62 Associate Director, Mitigation and Research.

(a) The Associate Director, Mitigation and Research is authorized to exercise the authority of the Director:

(1) Pursuant to the Earthquake Hazards Reduction Act of 1977, which was delegated to the Director by Sections 1-104 and 4-204 of Executive Order 12148 of July 20, 1979.

(2) Concerning coordination of efforts to promote dam safety pursuant to Section 2-103 of Executive Order 12148 of July 20, 1979.

(b) Notwithstanding any general delegation of authority in this part to another officer of FEMA and excepting delegations under the Federal Fire Prevention and Control Act of 1974, if the authority delegated in the general delegation contains authority to conduct research, that research authority is delegated instead to the Associate Director, Mitigation and Research.

§ 2.63 Associate Director, Plans and Preparedness.

(a) Except as otherwise provided in this part, the Associate Director, Plans and Preparedness is authorized to exercise the authority of the Director pursuant to:

(1) Sections 1-101 and 1-103 and 4-105 of Executive Order 12148 of July 20, 1979, as amended, including authorities delegated pursuant to Executive Orders mentioned in Section 5-2 of Executive Order 12148.

(2) Sections 3 and 11 of the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98(b) and 98(h-2)) which were delegated to the Director by Executive Order 12155 of September 10, 1979.

(3) Section 4(h) of the Commodity Credit Corporation Charter Act as amended (15 U.S.C. 714b(h)) and by section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)) which functions were delegated to the Director by Sections 205 and 206 of Executive Order 12148 of July 20, 1979, as amended by E.O. 12155.

(4) Sections 103 and 303 of the National Security Act of 1947, as amended (50 U.S.C. 404 and 405). See Section 4-102 of Executive Order 12148.

(5) The Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2251 et seq.) which were delegated to the Director by Section 4-103 of Executive Order 12148.

(b) The following authorities are excluded from the delegation in paragraph (a) of this section and are delegated to other officers of FEMA or are reserved to the Director:

(1) Those authorities relating to international preparedness functions, which are reserved to the Director.

(2) Those authorities relating to provision of telecommunications systems and data processing systems and to the operations of the Special Facility which are delegated to the Director, Operations Support.

(3) Those authorities reserved to the Director under Section 501 of E.O. 10480.

(c) Except as otherwise provided in this part the Associate Director, Plans and Prepardness is authorized to exercise the powers and authorities of the Director pursuant to Section 201 of the Disaster Relief Act of 1974.

(d) The following authorities are excluded from the delegation in paragraph (c) of this section and are delegated to other offices of FEMA or reserved to the Director.

(1) Subsection 201(a)(3) to the extent critique and evaluation is for other than preparedness plans. See § 2.61(c)(6).

(2) Subsection 201(a)(2) to the extent such involves training. See § 2.66(a)(2).

(3) Subsection 201(a)(7). See § 2.62(b).

(4) Subsection 201(d).

(e) To the extent that the authority delegated in paragraph (c) of this section is exercised with respect to mitigation, the Associate Director, will coordinate with the Associate Director, Mitigation and Research.

(f) Except as otherwise specifically provided in this subpart, the Associate Director, Plans and Preparedness is authorized to exercise the authority of the Director:

(1) Pursuant to section 203 of Reorganization Plan No. 3 of 1978 (43 FR 41943) as further amplified in section 1-103(b) and 1-105 of E.O. 12127 of March 31, 1979.

(2) Pursuant to Section 2-101 of E.O. 12148 of July 20, 1979, relating to establishing Federal policies for, and coordinating all civil defense and civil emergency planning and preparedness functions of Executive agencies and section 2-103 relating to coordination of preparedness and planning to reduce the consequences of major terrorist incidents.

[45 FR 41421, June 19, 1980, as amended at 45 FR 74926, Nov. 13, 1980]

§ 2.64 Federal Insurance Administrator.

(a) Except as otherwise provided in this part, the Federal Insurance Administrator is authorized to exercise the power and authority of the Director, with respect to the National Insurance Development Program under Title XII of the National Housing Act (12 U.S.C. 1749bbb *et seq.*).

(b) The authorities in this paragraph (b) of this section are excluded from the delegation in paragraph (a) of this section and are delegated to other officials of FEMA or are reserved to the Director.

(1) Establish and administer the National Insurance Development Fund under Section 1243 of the National Housing Act (12 U.S.C. 1749bbb-13). See § 2.67(a)(18)(i).

(2) Audit the records of insurers or others under Section 1244(d) of the National Housing Act (12 U.S.C. 1749bbb-14). See § 2.70(a)(7)(ii).

(3) Exercise the powers with respect to the business type budget under Section 402(a) of the Housing Act of 1950 (12 U.S.C. 1249a(a)), applicable under Section 1247 of the National Housing Act (12 U.S.C. 1749bbb-17). See § 2.67(a)(18)(iv).

(4) Sue and be sued under Section 402(c) of the Housing Act of 1950 (12 U.S.C. 1749a(c)(3)), applicable under Section 1247 of the National Housing Act (12 U.S.C. 1749bbb-17). See § 2.52(b)(5).

(c) Except as otherwise provided in this part, the Federal Insurance Administrator is authorized to exercise the authority of the Director with respect to the National Flood Insurance Program (NFIP) under Section 15(e) of the Federal Flood Insurance Act of 1956 (42 U.S.C. 2414(e)) and the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 *et seq.*).

(d) The authorities in this paragraph (d) are excluded from the delegations in paragraph (c) of this section and are delegated to other officials of FEMA or are reserved to the Director.

(1) Borrow funds from the Treasury under Section 15(e) of the National Flood Insurance Act of 1956, as amended by Section 1303 of the National Flood Insurance Act, and under Section 1309 of the National Flood Insurance Act (42 U.S.C. 2414(e) and 4016). See § 2.67(a)(18)(ii).

(2) Establish and administer the National Flood Insurance Fund under Section 1310 of the National Flood In-

surance Act (42 U.S.C. 4017). See § 2.67(a)(18)(iii).

(3) Report on program operation, in an annual report to the President, under Section 1320 of the National Flood Insurance Act (42 U.S.C. 4027). See § 2.52(b)(1)(ii).

(4) Make the determination concerning federal operation of the program and the report to Congress under Section 1340 of the National Flood Insurance Act (42 U.S.C. 4071). See § 2.52(b)(6).

(5) Be sued under Section 1341 of the National Flood Insurance Act (42 U.S.C. 4072). See § 2.52(b)(7).

(6) Audit and examine the records of flood insurance pools and insurance companies or other private organizations under section 1348(b) of the National Flood Insurance Act (42 U.S.C. 4084(b)). See § 2.70(a)(iii).

§ 2.65 United States Fire Administrator.

(a) Except as otherwise provided in this subpart, including subsection (b), of this section, the Administrator, United States Fire Administration, is authorized to exercise the authorities contained in Sections 1 through 27 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 *et seq.*). This delegation does not include those under Sections 18 and 23 which were not transferred to the Director by Reorganization Plan No. 3 of 1978.

(b) The authorities contained in Sections 16 and 21(c) of the Federal Fire Prevention and Control Act of 1974, are excluded from the delegation in paragraph (a) of this section and are reserved to the Director or delegated to other officials of FEMA. See § 2.52(b)(1)(i), and § 2.70(a)(7)(i).

§ 2.66 Assistant Director for Training and Education.

(a) The Assistant Director for Training and Education is authorized to exercise the authority of the Director with respect to:

(1) Subsection 201(e) of the Federal Civil Defense Act of 1950, as amended, (50 U.S.C. App. 2281(e)) including, but not limited to, authority to approve requests for reimbursement and related documents for obligation of payment of travel and per diem expenses of students under subsection 201(e).

(2) Training under subsection 201(a)(2) of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5131(a)(2)).

(b) Notwithstanding any general delegation of authority in this part to another officer of FEMA, and excepting delegations under the Federal Fire Prevention and Control Act of 1974, if the authority delegated in the general delegation contains a training function, that authority is instead delegated to the Assistant Director for Training and Education.

§ 2.67 Director, Office of Finance and Administration.

(a) The Director, Office of Finance and Administration is authorized to exercise the authorities of the Director to:

(1) Approve requisitions for disbursing funds, reports of current accounts rendered by disbursing officers, and other financial and accounting documents involving FEMA, the General Accounting Office, and the Department of the Treasury, and Office of Management and Budget.

(2) Certify to the General Accounting Office (GAO) any charge against any officer or agent entrusted with public property, arising from any loss and accruing by his fault, to the Government as to the property so entrusted to him.

(3) Make determinations concerning performance of service, the periods of such service, and the amounts of remuneration for social security purposes.

(4) Authorize officers and employees to certify vouchers.

(5) Approve apportionment and reapportionment requests; reports on appropriation accounts; and reports on status of apportionments for corporations and enterprises.

(6) Approve reports on budget status, obligation basis, and accrual basis, as required by the Antideficiency Act.

(7) Waive, deny, or refer to GAO, claims of the United States against FEMA employees for erroneous payment of pay of not more than $200.

(8) Issue primary allowances to Associate Directors, Administrators, Assistant Directors, Office Directors or equivalent, and Regional Directors.

(9) Receive and credit amounts received to the applicable appropriation of FEMA or to the miscellaneous receipts account.

(10) Request cashier designation and resolution from the Department of the Treasury, and designate persons to serve in FEMA.

(11) Maintain official FEMA payroll, retirement, leave and travel records.

(12) Manage records and files within FEMA, including records creation, organization, maintenance, and disposal. Place advertisements in newspapers pursuant to 44 U.S.C. 3702.

(13) Assign and reassign real and personal property within FEMA.

(14) Provide for accountability for property.

(15) Issue determinations of excess property and transfer of same as required.

(16)(i) Approve travel and expenses incurred pursuant to relocation of the duty station of a FEMA employee.

(ii) Approve invitational travel.

(17) Provide for space management.

(18)(i) Establish and administer the National Insurance Development Fund under Section 1243 of the National Housing Act (12 U.S.C. 1749bbb-13).

(ii) Borrow funds from the Treasury under Section 15(e) of the National Flood Insurance Act of 1956, as amended by Section 1303 of the National Flood Insurance Act, and under Section 1309 of the National Flood Insurance Act (42 U.S.C. 2414(e) and 4016).

(iii) Establish and administer National Flood Insurance Fund under Section 1310 of the National Flood Insurance Act (42 U.S.C. 4017).

(iv) Exercise of the powers under Section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749a(a)) relating to submission of a business type budget applicable under Section 1247, The National Housing Act (12 U.S.C. 1749bbb-17).

(19)(i) Make purchases and contracts by advertising for equipment and supplies, administrative equipment, office supplies, professional services, transportation of persons and property, and nonpersonal services, and determine that the rejection of all bids is in the public interest.

(ii) Negotiate purchases and contracts for equipment and supplies, professional services, transportation of persons and property, and non-personal services without advertising; and make and issue determinations related thereto pursuant to section 302(c) (1)-(10), (14) and (15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252 (c) (1)-(10), (14) and (15)) and 40 U.S.C. 541-544 with respect to contracting for the services of Architects Engineers.

(iii) Make purchases and contracts for the procurement of printing and binding services in accordance with the current Government Printing and Binding Regulations of the Joint Committee on Printing and Title 44 of the United States Code.

(iv) Enter into and administer Interagency Agreements under the Economy Act or any other such agreement involving obligation of funds.

(b) Notwithstanding any general delegation of authority in this part to another officer of FEMA, if the authority delegated in the general delegation contains procurement authority that authority is delegated to the Director, Office of Finance and Administration, with authority to redelegate to any employee of FEMA. As used in this paragraph (b) the term "procurement" includes: Acquisition from a recipient, including a State or local government, of property or services for the direct benefit or use of the Federal government.

(c) Notwithstanding any general delegation of authority in this part to another officer of FEMA, other than the delegation to Regional Directors under § 2.71, if the authority delegated contains authority to award discretionary grants that authority is delegated to the Director, Office of Finance and Administration, who is authorized to exercise the authority of the Director with respect thereto. The Director, Office of Finance and Administration, may redelegate this authority to any employee of FEMA. Discretionary grants include those instruments which are awarded to a selected or limited number of recipients deemed best qualified based upon criteria designed for the conduct of a specific project. This can include governments. Discretionary grants do not include those awarded to recipients based, upon (1) meeting published criteria, terms or conditions; (2) a formula; or (3) a program of financial assistance designed to aid State or local governments generally. The delegation to the Regional Directors under § 2.71 to implement various programs is not affected by this delegation to the Director, Finance and Administration.

§ 2.68 Director, Office of Operations Support.

The Director, Office of Operations Support is authorized to exercise the authorities of the Director:

(a) To appoint uniformed guards as special policemen of the Federal Emergency Management Agency pursuant to Pub. L. 80-566, as amended, 40 U.S.C. 318 and a delegation from the Administrator of General Services.

(b) To make provisions for transportation in connection with the continuity of government program to the same extent and in the same manner as permitted the Secretary of a Military Department under 10 U.S.C. 2632.

(c) Under Sections 1-101, 1-103, 4-102, 4-103, and 4-104 of Executive Order 12148 of July 20, 1979, but only to the extent these relate to the provision of telecommunications systems and data processing systems and to the operations of the Special Facility.

(d) To utilize or make available to Federal, State, and local governments, the facilities of the civil defense communication system to Section 201(c) of the Disaster Relief Act of 1974.

§ 2.69 General Counsel.

The General Counsel is authorized to exercise the authorities of the Director to:

(a) Accept service of process on behalf of the Agency and its officials.

(b) Determine the agency's position with respect to litigation and refer matters directly to the Attorney General for prosecution or the initiation of litigation.

(c) Determine the government's position in connection with any dispute before a Board of Contract Appeals, including the authority to settle or adjust any such claim.

(d) Consider, compromise and settle tort claims against FEMA, but any award, compromise, or settlement of more than $25,000 requires the prior written approval of the Attorney General or designee. See 44 CFR Part 11.

(e) Except as provided above, compromise, suspend, or terminate collection actions by FEMA on any claim in favor of the government in amounts not exceeding $20,000 exclusive of interest.

(f) Serve as Agency Ethics Counselor.

(g) Sign document making editorial corrections, including changes to regulations in documents to be published in the FEDERAL REGISTER.

[45 FR 41421, June 19, 1980, as amended at 45 FR 74926, Nov. 13, 1980]

§ 2.70 Inspector General.

(a) The Inspector General is authorized to exercise any authority of the Director with respect to:

(1) Auditing the accounting, financial, and other operations of FEMA, including grants, contracts, and other expenditures of funds.

(2) Auditing the books and records of grantees of FEMA and contractors doing business with FEMA, or of subcontractors as appropriate.

(3) Authorizing officers and employees having investigatory functions, while engaged in the performance of their duties in conducting investigations, to administer oaths.

(4) Taking possession from FEMA employees of any official FEMA documents, including, but not limited to, books, and workpapers necessary to conduct investigations.

(5) Personnel and physical security.

(6) Serving as the FEMA Security Officer and making those determinations required by E.O. 10450 of April 27, 1953, as amended, and by E.O. 12065 of June 28, 1978, as amended, with respect to security requirements for Government employment and the safeguarding of classified material.

(7) Carrying out certain authorities specifically reserved from the delegations to the United States Fire Admin-

istrator in § 2.65 and to the Federal Insurance Administrator in § 2.64 as follows:

(i) Auditing pursuant to Section 21(c) of the Federal Fire Prevention and Control Act of 1974, as amended.

(ii) Auditing the records of insurors or others under Section 1244(d) of the National Housing Act (12 U.S.C. 1749bbb.14).

(iii) Auditing and examining the records of flood insurance pools and insurance companies or other private organizations under Section 1348(b) (42 U.S.C. 4084(b)).

(b) Notwithstanding any general delegation of authority to another officer of FEMA, if such authority delegated in the general delegation contains an audit authority, that authority is delegated to the Inspector General.

§ 2.71 Regional Directors

(a) Except as otherwise provided in this part, each Regional Director is authorized to exercise the authority of the Director, FEMA, pursuant to the provisions of sections 1-102, 4-201, and 4-202 of Executive Order 12148 of July 20, 1979.

(b) Except as otherwise provided in this part, each Regional Director is authorized to exercise the authority of the Director pursuant to the Disaster Relief Act of 1974, which were delegated to the Director by Section 4-203 of Executive Order 12148 of July 20, 1979.

(c) The following authorities are excluded from the delegation under paragraph (b) of this section and are delegated to other officials of FEMA or are reserved to the Director:

(1) The authority to issue rules and regulations pursuant to the Disaster Relief Act of 1974.

(2) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act.

(3) The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Act.

(4) The authority contained in section 413 of the Act to provide professional counseling services.

(5) The authority contained in section 407 of the Act concerning unemployment assistance.

(6) The authority to appoint a Federal Coordinating officer pursuant to section 303 of the Act.

(7) The authority to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service and other relief or disaster assistance organizations pursuant to section 312(b) of the Act.

(8) The authority to determine that a State plan of self-insurance is satisfactory pursuant to section 314 of the Act.

(9) The authority to approve a community disaster loan pursuant to section 414 of the Act.

(10) The authority to provide assistance for the suppression of fires pursuant to section 417 of the Act.

(d) Each Regional Director is authorized to exercise the authorities of the Director, FEMA, with respect to sections 201(d), 302(b), 306(a), and 309 of the Disaster Relief Act of 1974.

(e) Each Regional Director is authorized to exercise the authorities of the Director, FEMA, with respect to:

(1) Approval, disapproval, modification or amendment of request from the States related to financial contributions for civil defense materials and facilities and personnel and administrative expenses pursuant to Sections 201(i) and 205 of the Federal Civil Defense Act of 1950, as amended.

(2) Conduct of the following programs for the States under the Federal Civil Defense Act of 1950 as amended including execution of the necessary documents (which documents are not to be considered as procurement documents) and to implement and conduct the program:

(i) Radiological System Maintenance (RSM);

(ii) National Communications System (Radio) Agreements (NACOM II) or Civil Defense National Radio System (CDNARS) Agreements;

(iii) Nuclear Civil Protection Planning (NCP);

(iv) Shelter Survey and Marketing; and

(v) On a case-by-case basis, Emergency Broadcast Station Protection Program (EBS).

(f) In exercising any authority delegated to them, the Regional Directors shall coordinate (to the maximum extent practicable) technical matters and routine actions with appropriate program officials on the staffs of the various Administrators, Associate Directors, Assistant Directors, General Counsel, Inspector General or Office Directors who shall render policy guidance and program direction.

(g) Each Regional Director is authorized to accept service of process on behalf of the agency and its officials. Upon so doing, the Regional Director shall notify the General Counsel as soon as possible.

(h) Each Regional Director is authorized to approve reimbursement, to the extent appropriated funds are available for obligation by the Regional Director, for expenses of attendance of cooperating officials and individuals at meetings concerned with the work of emergency preparedness, provided:

(1) That the Appropriations Act for the fiscal year in which the obligation is incurred contains the same authorizing language that is found in Pub. L. 96-103 with respect to such travel, and

(2) That the authority exercised under this delegation is subject to the Federal Travel Regulations and per diem rates as may from time-to-time be established by the Administrator of General Services.

[45 FR 41421, June 19, 1980, as amended at 45 FR 74926, Nov. 13, 1980]

PART 3—STANDARDS OF CONDUCT

Subpart A—General

Sec.
3.1 Purpose.
3.2 Applicability and scope.
3.3 Definitions.
3.4 Notification to employees and special Government employees.
3.5 Interpretation and advisory service.
3.6 Employee responsibilities.
3.7 Sanction for violation.
3.8 Disqualification procedure.

Subpart B—Conduct and Responsibilities of Employees

Sec.
3.10 Administrative extension of statutory limitations.
3.11 Proscribed actions.
3.12 Financial interests.
3.13 Outside employment and other activities.
3.14 Gifts and gratuities.
3.15 Use of Government property, vehicles, and communications systems.
3.16 Misuse of information.
3.17 Gambling, betting and lotteries.
3.18 Indebtedness.
3.19 General conduct prejudicial to the Government.
3.20 Intermediaries and product recommendation.
3.21 Membership in organizations.
3.22 Use of intoxicants.
3.23 False statements.
3.24 Care of official records and documents.
3.25 Disclosure of information about an individual.

Subpart C—Conduct and Responsibilities of Special Government Employees

3.40 Applicability of Subpart B.
3.41 Use of Government employment.
3.42 Use of inside information.
3.43 Coercion.
3.44 Gifts, entertainment, and favors.
3.45 Applicability of other provisions.

Subpart D—Disclosure of Financial Interests

GENERAL PROVISIONS

3.50 General.
3.51 Information not required.
3.52 Effect of employees' statements on other requirements.
3.53-3.59 [Reserved]

FINANCIAL DISCLOSURE UNDER ETHICS IN GOVERNMENT ACT OF 1978

3.60 Who must file.
3.61 Form used to file.
3.62 When to file.
3.63 How and where to file.
3.64 Supervisory review of report.
3.65 Action on report.
3.66 Public release.
3.67-3.79 [Reserved]

FINANCIAL DISCLOSURE UNDER EXECUTIVE ORDER 11222 AND 5 CFR PART 735

3.80 Who must file.
3.81 Form used to file.
3.82 When to file.
3.83 How and where to file.
3.84 Review of report.

Sec.
3.85 Action on report.
3.86 Confidentiality of employees' statements.
3.87 Employees' complaint on filing requirement.
3.88 Employees not required to submit statements.
3.89 Information not known to employees.

Subpart E—Post Employment Conflicts of Interest

3.100 Scope.
3.101 Definitions.
3.102 General counsel.
3.103 Records.
3.104 Interpretative standards.
3.105 Authority to prohibit appearances.
3.106 Receipt of information concerning former employees.
3.107 Conferences.
3.108 Institution of proceeding.
3.109 Contents of complaint.
3.110 Service of complaint and other papers.
3.111 Answer.
3.112 Reply to answer.
3.113 Proof; variance; amendment of pleadings.
3.114 Motions and requests.
3.115 Representation.
3.116 Administrative Law Judge.
3.117 Hearings.
3.118 Evidence.
3.119 Depositions.
3.120 Transcript.
3.121 Proposed findings and conclusions.
3.122 Decision of Administrative Law Judge.
3.123 Appeal to the Director, Federal Emergency Management Agency.
3.124 Decision of the Director, Federal Emergency Management Agency.
3.125 Notice of disciplinary action.
APPENDIX A STATUTES GOVERNING CONDUCT OF FEDERAL EMPLOYEES

AUTHORITY: Title II of Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1838 (5 U.S.C. app); 5 CFR Parts 735, 737; EO 11222, 30 FR 6469, 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted.

SOURCE: 44 FR 75062, Dec. 18, 1979, unless otherwise noted.

Subpart A—General

§ 3.1 Purpose.

(a) The purpose of this part is to set forth Federal Emergency Management Agency (FEMA) policy and procedure relating to employee responsibilities and conduct.

(b) 5 CFR 735.101 states in part: "The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards".

(c) This part effectuates the requirements in Subpart A of 5 CFR Part 735 that FEMA issue regulations covering FEMA employees and special Government employees which (1) implement Executive Order 11222 of May 8, 1965, and 5 CFR Part 735 and (2) prescribe additional standards of ethical and other conduct appropriate to the particular functions of FEMA. This part also effectuates the requirements placed on FEMA by the Ethics in Government Act of 1978, and implementing regulations of OPM.

§ 3.2 Applicability and scope.

(a) This part applies to all persons included within the terms "employee" and "special government employee" as defined in § 3.3. This part also applies to all former employees and special government employees of FEMA.

(b) This part prescribes general standards of conduct for FEMA employees. It is not, however, inclusive. Other FEMA regulations, instructions and issuances may include standards of ethical behavior. Employees must consult these. Among these instructions are those related to (1) the Freedom of Information Act, (2) The FEMA Employee Security Program, and (3) The FEMA Acquisition Process.

(c) This part does not apply unless there is specific provision to that effect to standards of ethical conduct required by law or regulation of FEMA contractors or grantees, nor does it apply to organizational conflicts of interest.

§ 3.3 Definitions.

For purposes of this part:

(a) "FEMA" means the Federal Emergency Management Agency.

(b) "Director" means the Director, FEMA.

(c) "Employee" includes every employee of FEMA, Headquarters and field, but does not include a special Government employee nor does it include a member of the Executive Reserve except during such time as the member is serving as an employee of FEMA.

(d) "Special Government employee" includes an employee of FEMA who is retained, designated, appointed, or employed to perform, with or without compensation, and for not to exceed 130 days during any period of 365 consecutive days, temporary duty on either a full time or intermittent basis. See 18 U.S.C. 202.

(e) "Person" includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or other organization or institution.

(f) "Ethics Counselor" means the FEMA officer designated to administer for FEMA Titles II and V of the Ethics in Government Act of 1978 (Pub. L. 95-521), and it also means the FEMA Official who serves as the Agency's designee to OGE on matters covered by Parts 735 and 737 of Title 5 of the Code of Federal Regulations and who coordinates and directs the FEMA ethics counseling service. In FEMA this is the General Counsel.

(g) "OGE" means the Office of Government Ethics in the Office of Personnel Management (OPM).

(h) "Head of Unit" as used herein includes Deputy Director, Associate Directors, Regional Directors, Federal Insurance Administrator, and the United States Fire Administrator. For purposes of this part, the Deputy Director is "Head of unit" for any organizational component of FEMA not included in the above listing of final publication. During the absence of, or a vacancy in the Office of the Deputy Director, the Director may name another official in FEMA to exercise this function.

§ 3.4 Notification to employees and special Government employees.

(a) The provisions of this part as it is revised, shall be brought to the attention of, and made available to, each employee and special Government employee by furnishing a copy at the time of final publication. The provisions of this part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Government employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Director may prescribe.

§ 3.5 Interpretation and advisory service.

(a) The Ethics Counselor serves as FEMA's designee to OGE on matters covered by this Part and by 5 CFR Parts 735 and 737. The Ethics Counselor is responsible for coordinating FEMA's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available.

(b) Such deputy counselors as may be required shall be designated by the General Counsel from among the staff of the Office of the General Counsel to give authoritative advice and guidance to current, former and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) To assist in avoiding situations of noncompliance the Ethics Counselor shall, in accordance with section 206(b)(7) of the Ethics in Government Act of 1978 (Pub. L. 95-521), maintain a list of those circumstances or situations which have resulted or may result in noncompliance with laws or regulations concerning conflicts of interest and shall furnish a published list to employees subject to Title II of the Ethics in Government Act of 1978.

(d) The Ethics Counselor shall provide advice promptly to former FEMA employees and special Government employees who make inquiry on any matter arising under the post employment conflict of interest regulations of OPM (5 CFR Part 737) and this part.

§ 3.6 Employee responsibilities.

(a) Each employee and special Government employee has a positive duty to become acquainted with the numerous statutes relating to the ethical and other conduct of employees and special Government employees of FEMA and of the Government. Appendix A of this part contains a listing of many of the more important statutory provisions of general applicability. In case of doubt on any question of statutory application to fact situations that may arise, an individual should consult the text of the statutes, Executive Orders or regulations and may consult the Ethics Counselor or Deputy Counselor. These will be made available to the employee by the Ethics Counselor or Deputy Counselor, who have available for review copies of laws, Executive Orders, agency regulations, and pertinent issuances by OPM on this subject.

(b) In any case where any employee or special Government employee, regardless of grade or position, finds that participation in a particular matter or transaction might be considered to involve a direct or indirect financial interest, such individual shall promptly submit a request for disqualification to act in the matter or for other proposed remedial action in writing to the appropriate supervisor. This request will be acted on in accordance with § 3.8.

§ 3.7 Sanction for violation.

A violation of this Part by an employee or special government employee may be cause for appropriate disciplinary action, or remedial action, which may be in addition to any penalty prescribed by law.

§ 3.8 Disqualification procedure.

(a) This section applies whether or not the conflict or apparent conflict of interest appears on any disclosure form and it applies to any employee or special government employee, regardless of grade or position. It applies to a request for disqualification to act made pursuant to paragraph (b) of this section.

(b) All disqualification or remedial action requests are referred to the Ethics Counselor. If the Ethics Counselor reaches an opinion, based on information submitted to him, that an employee or special government employee is not in compliance with applicable laws and regulations, then the Ethics Counselor shall so notify the individual of this opinion. The Ethics Counselor shall act on requests by individuals but is not required to approve the specific remedial action proposed. The individual shall be given a reasonable opportunity for an oral or written response. The Ethics Counselor may also ask for additional information.

(c) The Ethics Counselor shall consider the individual's response, and reach an opinion as to whether or not the individual is in compliance. If the opinion is that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, and after consultation with the individual (if practical) determine and notify the individual of what steps if any, and the date for completion, would be appropriate for assuring compliance with the laws and regulations.

(d) These steps may include:

(1) Divestiture,

(2) Restitution,

(3) The establishment of a blind trust,

(4) Request for an exemption under section 208(b) of Title 18, United States Code, or

(5) Voluntary request for transfer, reassignment, disqualification for a particular assignment, or limitation of duties.

(e) If any of the remedial actions indicated in paragraph (d)(5) of this section is contemplated, appropriate personnel officers of FEMA shall be notified and shall participate in the determination of the action proposed to be effected.

(f) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (c) the matter shall be referred to the Director.

Subpart B—Conduct and Responsibilities of Employees

§ 3.10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this part, including those in Appendix A, which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may, in appropriate cases be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this part does not mean that it may not be the basis for disciplinary action against an employee.

§ 3.11 Proscribed actions.

An employee shall avoid any action whether or not specifically prohibited by this Subpart which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels;

(f) Affecting adversely the confidence of the public in the integrity of the Government;

(g) Discriminating contrary to any law, rule or regulation, against any other employee, or applicant for employment, on the grounds of race, color, religion, national origin, sex, age, handicapping condition, marital status, or political affiliation.

(h) Excluding contrary to any law, rule or regulation, any person from participating in, or denying to any person the benefits, of, any program or activity administered by FEMA on the grounds of race, color, religion, national origin handicapping condition, age, sex, marital status or political affiliation;

(i) Knowingly participating, while conducting official business, in or attending any segregated meetings, or meetings held in segregated facilities, from which persons are excluded because of race, color, religion, sex or national origin, etc.

§ 3.12 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the employee's Government duties and responsibilities as a Federal Employee; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) No employee shall participate in any manner, on behalf of the United States, in the negotiation of contracts, the making of loans, and grants, the granting of subsidies, the fixing of rates, or the issuance of valuable permits or certificates, or in any investigation or prosecution, or in the transaction of any other official business which affects chiefly a person:

(1) By whom the individual has been employed or with whom the individual has had any economic interest within the preceding two years, or

(2) With whom the individual has any economic interest or any pending negotiations concerning a prospective economic interest, except with express prior authorization in writing by the Director.

(c) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order, OPM regulation (5 CFR Parts 735 and 737) or the regulation in this part.

(e)(1) The financial (or economic) interests described below are, unless otherwise determined by the Ethics Counselor in specific cases, too remote or too inconsequential to affect the integrity of an employee's services, and are thereby exempted from the prohibitions of 18 U.S.C. 208(a), and the holding of such an interest does not exclude such employee's participation in the transaction of any official business involving such financial or economic interest:

(i) Deposits in a bank, savings and loan association, building association, credit union or similar financial institution; or policies held with an insurance company;

(ii) Any holding in a widely held mutual fund, or regulated investment company which does not specialize in any particular industry;

(iii) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by the employee or further payments to the plan by the organization with respect to the services of the employee. To the extent that such plans are profit sharing or stock bonus plans, this exemption shall not apply.

(2) These exempted financial interests should, however, be reported by employees on disclosure forms to the extent prescribed in Subpart D of this Part.

(3) For purposes of this part unless otherwise provided in law, regulation, or on any form requesting disclosure, the interest of a spouse, dependent child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those relations who are residents of the employee's household.

(f) Paragraph (b) of this section does not apply if the officer or employee first advises the Ethics Counselor in writing of the nature and circumstances of the matter, makes full disclosure of the financial interest, and receives in advance a written determination by such Ethics Counselor or Deputy Counselor that such interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(g) The provisions of this section do not limit or add to the provisions of any disclosure requirements under Subpart D of this part.

§ 3.13 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment, and which might result in a conflict or apparent conflict between the private interests of the employee and the official Government duties and responsibilities. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair the mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;

(3) Outside activities that may be construed by the public to be the official acts of FEMA;

(4) Activities that establish relationships or property interests that may result in a conflict between one's private interests and official duties;

(b) Full-time employees and part-time employees with a regularly scheduled tour of duly must obtain the prior approval of the Ethics Counselor or Deputy Counselor before engaging in outside employment in the same professional field as that of the individual's official position.

(c) Although teaching, lecturing, and writing are outside employment, employees are encouraged to engage in such activities so long as they are not prohibited by law, Executive Order, OPM regulations or this part.

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government.

(e) Any full-time employee mentioned in § 3.60 of this part, whose appointment is required to be made by and with the advice and consent of the Senate, may not have earned income in any calendar year attributable to such year in excess of 15% of his or her salary.

(f) No employee, including the Director, shall receive outside compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of FEMA, or which draws substantially on official data or ideas which have not become part of the body of public information.

(g) The use of an employee's name and title in connection with articles for publication which bear upon work in FEMA is permissible only if approval is obtained from the Ethics Counselor or Deputy Counselor.

(h) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 3.14 Gifts and gratuities.

(a) Except as otherwise provided in this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with FEMA;

(2) Conducts operations or activities that are regulated by FEMA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationship, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(5) Acceptance of a gift, gratuity, favor, entertainment, loan, payment of expenses, fees, compensation, or other thing of monetary value when such acceptance is determined in writing by the Director, to be necessary and appropriate in view of the work FEMA and the duties and responsibilities of the employee. A copy of each such determination shall be sent to the Ethics Counselor.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 3.13 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under FEMA orders when reimbursement is proscribed by decisions of the Comptroller General for such reasons as reimbursement by the person to the Agency directly.

§ 3.15 Use of Government property, vehicles and communications systems.

(a) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities.

(b) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) An employee shall not use, or authorize the use of, Government owned or leased motor vehicles or aircraft for other than official purposes (31 U.S.C. 638a(c)).

(d) An employee shall not use the Federal Telecommunications System or similar system, or commercial telephone facilities for official long-distance calls unless specifically authorized to do so. Use of these facilities for purposes other than the conduct of official business is also prohibited.

§ 3.16 Misuse of information.

(a) *Use of inside information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 3.13 directly, or indirectly use, or allow the use of, information which has been or has the appearance of having been obtained through or in connection with Government employment and which has not been made available to the general public.

(b) *Coercion.* An employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

(c) *Disclosure of restricted information.* Except as authorized by law, or FEMA regulation, including that related to the Freedom of Information Act, no employee shall divulge restricted commercial or economic information, or restricted information concerning the personnel or operations including procurement actions of any Government agency, or release any such information in advance of the time prescribed for its authorized release.

§ 3.17 Gambling, betting and lotteries.

An employee shall not, except as otherwise lawfully authorized, participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in a game for money or property; or in selling or purchasing a numbers slip or ticket.

§ 3.18 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section "a just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which, in the view of FEMA, does not under the circumstances, reflect adversely on the Government as employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require FEMA to determine the validity or amount of the disputed debt.

§ 3.19 General conduct prejudicial to the Government.

(a) Officers and employees of the Federal Government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the Government is not particularly interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) Each employee shall act in a manner that facilitates the effective accomplishment of the work of FEMA, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with FEMA.

§ 3.20 Intermediaries and product recommendation.

Except as authorized in connection with the performance of official duties, no employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with FEMA nor shall an employee recommend any device or product tested by or for, or used by FEMA, or for which FEMA provides financial assistance.

§ 3.21 Membership in organizations.

(a) An employee may not, in his or her official capacity as an employee of FEMA, serve as a member of a non-Federal or private organization except where statutory authority exists, or where the Director has determined, in writing, that such service would be beneficial to FEMA and consistent with such employee's service as a FEMA employee.

(b) The foregoing is subject to the following. An employee may, and is encouraged to serve in an individual capacity as a member of a non-Federal or private organization, particularly those engaged in civic or community affairs on a non-political, non-profit basis, provided that:

(1) Membership does not violate any restriction, law, or regulation, including this part, and

(2) The employee's official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that the employee is acting in an official capacity.

(c) An employee may be designated in writing to serve as a liaison representative of FEMA to a non-Federal or private organization when the Director, an Associate Director, or a Regional Director, as appropriate, has determined that such service would be beneficial to FEMA and provided that:

(1) The activity relates to the work of FEMA;

(2) The employee does not participate by vote in the policy determinations of the organization;

(3) FEMA is in no way bound by any vote or action taken by the organization.

§ 3.22 Use of intoxicants.

An employee shall not use intoxicants habitually, to excess (5 U.S.C. 7352). Intoxicants shall not be consumed on Government-owned or leased premises. An employee found using, or under the influence of, intoxicants while at work will be subject to disciplinary action.

§ 3.23 False statements.

An employee shall not, knowingly and willfully, conceal or cover up a material fact, or make any false, or fictitious statement in connection with any official matter, document, or record (18 U.S.C. 1001, 2073).

§ 3.24 Care of official records and documents.

An employee shall not, willfully and unlawfully, conceal, remove, mutilate, falsify, or destroy any Government document or record (18 U.S.C. 285, 2071).

§ 3.25 Disclosure of information about an individual.

(a) Every employee who is involved in the design, development, operation, or maintenance of a system of records or who has access to a system of records shall familiarize himself with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and FEMA regulation implementation of the Privacy Act of 1974 (44 CFR Part 6) and FEMA directives issued thereunder and apply these requirements to all systems of records.

(b) No officer or employee shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is to a recipient specified in paragraph (c) of this section. The term "record", for purposes of this section, means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice-print, or photograph. The term "system of records" means a group of any records under the control of FEMA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The term "routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of records without a written request by and without the prior written consent of the individual to whom the record pertains if the disclosure is:

(1) To those employees of the agency which maintains the record who have a need for the record in the performance of their duties.

(2) Pursuant to section 552 of Title 5 U.S.C. (Freedom of Information Act);

(3) For a routine use as defined in section (a)(7) of the Privacy Act of 1974 (described in paragraph (b) of this section);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or a subcommittee of any such joint committee;

(10) To the Comptroller General or any authorized representatives, in the course to the performances of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(d) No employee shall maintain a record describing how any individual exercises rights guaranteed by the

First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) An employee is subject to criminal penalties and administrative sanctions who by virtue of such employment or offical position has possession of or access to agency records which contain idividually identifiable information the disclosure of which is prohibited by paragraph (a) of this section or by any other rules, regulations or directives of FEMA established under the Privacy Act of 1974, and who:

(1) Knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(2) Willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or

(3) Knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses.

(g) An employee subjects self to administrative sanctions, and subjects FEMA to civil penalties who:

(1) Makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974; or

(2) Refuses to comply with an individual's request to gain access to review and to obtain a copy of any information pertaining to him; or

(3) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to ensure fairness in any determination relating to the qualifications, character, right, or opportunities of or benefits to the individual that may be made on the basis of such record and consequently a determination is made which is adverse to the individual; or

(4) Fails to comply with any provision of the Privacy Act of 1974 or any FEMA regulation or directive implementing it (5 U.S.C. 552a(g)(4)).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 3.40 Applicability of Subpart B.

Except as specifically provided in § 3.41-§ 3.45. Each special Government employee is subject to the provisions of Subpart B as if such individual were an employee, with the following exceptions:

(a) Section 3.13 Outside employment and other outside activities;

(b) Section 3.14 Gifts and gratuities;

(c) Section 3.21 Membership in organizations.

§ 3.41 Use of Government employment.

A special Government employee shall not use FEMA employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the individual or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.42 Use of inside information.

(a) A special Government employee shall not use information obtained as a result of FEMA employment which has not become part of the body of public information for private gain for the employee or another person either by direction on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties.

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 3.13.

§ 3.43 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.44 Gifts, entertainment and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with FEMA anything of monetary value as a gift, gratuity, loan, entertainment, or favor for the employee or another person particularly one with whom the employee has family, business, or financial ties.

(b) The exceptions or § 3.14, which are applicable to employees, are also applicable to special Government employees.

§ 3.45 Applicability of other provisions.

(a) Each special Government employee shall acquaint himself with each statute, Executive Order, regulation, or similar provision listed in Appendix A to this part.

(b) A special Government emoployee engaged on irregular or occasional basis is bound by the political activity restrictions or the Hatch Act cited in Appendix A only while in an active duty status and for the entire 24 hours of any day during which the special government employee is actually employed.

Subpart D—Disclosure of Financial Interests

GENERAL PROVISIONS

§ 3.50 General.

(a) Title II of the Ethics in Government Act of 1978 (Pub. L. 95-521), which became effective January 1, 1979, requires that certain officers and employees of the executive branch make specified financial disclosures in accordance with procedures for filing review and public availability established by the Office of Personnel Management.

(b) Section 402 of Executive Order 11222 of May 8, 1965 authorizes the Office of Personnel Management to prescribe regulations requiring submission by certain officers and employees of the executive branch of statements of employment and financial interest. These are contained in Subpart D of 5 CFR Part 735.

(c) This Subpart D describes for FEMA, the procedures required to implement the laws, Executive orders, and Office of Personnel Management Regulations concerning disclosure of financial and employment interests.

(d) An individual required to file a disclosure statement by virtue of the Ethics in Government Act of 1978 need not file a disclosure statement required by virtue of E.O. 11222 and Subpart D of 5 CFR Part 735.

§ 3.51 Information not required.

Subpart D of this part does not require an employee to report information relating to a connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in disclosure statements.

§ 3.52 Effect of employees' statements on other requirements.

The statements and supplementary statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation, including this part.

§ 3.53—§ 3.59 [Reserved]

FINANCIAL DISCLOSURE UNDER ETHICS IN GOVERNMENT ACT OF 1978

§ 3.60 Who must file.

The following officials of FEMA, if they have served 61 or more days during the preceding calendar year:

(a) Officers and employees (including special Government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay for GS-16. This includes all positions in the Senior Executive Service;

(b) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16;

(c) Employees in the excepted service in positions which are of a confidential or policy-making character unless their positions have been excluded by regulations issued by the Director of the Office of Government Ethics (see 5 CFR 735.503).

(d) The Ethics Counselor.

§ 3.61 Form used to file.

The disclosure statement which must be used is either Standard Form (SF) 278, or Standard Form 278A (used for appointees confirmed by the Senate). "Financial Disclosure Statement for Executive Branch Personnel." Copies are available from the Ethics Counselor.

Hereafter the regulation uses the term SF 278 to describe both forms.

§ 3.62 When to file.

No later than May 14 annually, or 30 days after the individual assumes a position subject to the requirement in § 3.60 of this part unless the individual has within 30 days prior to assuming the position, left another position subject to the requirement. In the event of termination of employment, if the individual has not in the interim accepted another position subject to the requirement, report must be filed no later than the 30th day after termination, covering:

(a) The preceding calendar year if the annual May 15 report has not been filed, and

(b) The portion of the present calendar year up to the date of termination.

§ 3.63 How and where to file.

(a) The SF 278, with a copy of the employee's position description, shall be submitted to the Ethics Counselor (General Counsel), who shall note on the report the date it is received. The Ethics Counselor will forward the report to the Head of Unit under whom the individual serves for review.

(b) The Forms SF 278 of heads of units shall be submitted for review to the Deputy Director. The Deputy Director's Form SF 278 will be submitted to the Director for review.

(c) Special government employees who were employed for more than 60 days during CY 1978 will be required to file an annual report (SF 278) with processing of their forms to be accomplished in the same manner prescribed in paragraph (a) of this section.

§ 3.64 Supervisory review of report.

Upon receipt of an SF 278 the head of until will consider the reported financial interests as they relate to the individual's duties, and make recommendations. The Director or head of unit then will return the form with attachments, to the Ethics Counselor for review. The review process shall be completed within 60 days after the date of filing.

§ 3.65 Action on report.

(a) If, after review, the Ethics Counselor or Deputy Counselor is of the opinion that the individual making the report is in compliance with applicable law and regulation, he or she shall state such opinion on the report, and sign same. If additional information is required, the involved individual shall be notified as to what this information is and as to when it must be submitted.

(b) If the Ethics Counselor or Deputy Counselor is of the opinion, on the basis of information submitted that the individual is not in compliance with applicable laws and regulations, the invidividual shall be notified and the procedure specified in § 3.8 followed. Notwithstanding § 3.8 if steps for assuring compliance with applicable laws and regulations are not taken by the date set under § 3.8(c) by an individual appointment which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

§ 3.66 Public release.

(a) No later than 15 days after any report (including SF 278) is received by FEMA, the Ethics Counselor shall permit inspection of, or furnish a copy of, such report including the position description to any person who requests inspection or a copy. The report shall be retained for six years after receipt. No fee shall be charged for furnishing a copy unless the cost of reproduction exceeds $10 in which case the fee shall be the same as those established under the FEMA regulations implementing the Freedom of Information Act (Part 5 of this Title). The Ethics Counselor shall maintain an accurate accounting of disclosures of reports in accordance with the requirements of Part 6 of this title, which relates to implementation of the Privacy Act of 1974. These reports are part of a system of records—OPM—Govt 4 established by the Office of Personnel Management.

(b) Notwithstanding paragraph (a) a report may not be made available under this section to any person, except upon a written application by such person stating

(1) The person's name, occupation and address,

(2) The name and address of any other person on whose behalf the inspection or copy is requested, and

(3) That such person is aware of the prohibitions on the obtaining or use of the report.

These applications shall be made available to the public throughout the period during which the report is made available to the public.

§ 3.67—§ 3.79 [Reserved]

FINANCIAL DISCLOSURE UNDER EXECUTIVE ORDER 11222 AND 5 CFR PART 735

§ 3.80 Who must file.

(a) Except as provided in § 3.88, the following categories of employees shall submit statements of employment and financial interest:

(1) Employees classified as GS-13 or above who are in a position identified as a position the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprise; or

(iv) Other activities in which the decision or action has an economic impact on the interests of any non-Federal enterprise.

(2) Employees classified at GS-13 or above who are in a position which the Director has determined has duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the purpose of law, Executive order, and this part.

(3) Employees classified below GS-13 who are in a position which otherwise meet the criteria in paragraph (a) or (b) of this section, and which position has been approved by the OPM as an exception that is essential to protect the integrity of the Government and to avoid employee involvement in a possible conflict-of-interest situation.

(b) The specific positions described in paragraph (a) of this section shall be identified in a FEMA Directive. A copy of this directive shall be furnished to each incumbent of a position subject to the requirement of § 3.80 of this part, and shall be made available to any person upon request. The directive shall be kept current and reviewed at least annually. Designation of a position is effective upon actual notification to the incumbent, or upon inclusion of a statement in the official job description that the position is subject to requirements of this section.

§ 3.81 Form used to file.

The disclosure statement which must be used by the employees named according to § 3.80 is FEMA Form 11-1.

§ 3.82 When to file.

An employee required to submit a FEMA Form 11-1 pursuant to § 3.80 shall submit that statement not later than:

(a) Ninety days after the effective date of this part if employed on or before that effective date; or

(b) Thirty days after entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

§ 3.83 How and where to file.

(a) The FEMA Form 11-1 shall be submitted to the Ethics Counselor (General Counsel) for review and custody.

(b) Changes in, or additions to, the information contained in the Form 11-1 shall be reported to the Ethics Counselor in a supplementary statement of the financial interests or employment as of September 30 each year. This supplementary statement is due by October 31. If no changes or additions occur, a negative report is required.

(c) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of Section 208 of Title 18, United States Code, or this part.

§ 3.84 Review of report.

The FEMA Form 11-1 is reviewed by the Ethics Counselor, or Deputy Counselor, who shall obtain copies of the relevant job description. The counselors shall show the forms to supervisors, or other employees of FEMA only to the extent required to determine if a conflict of interest exists.

§ 3.85 Action on report.

When a statement submitted pursuant to this part or information from other sources indicates a conflict between the interests of an employee and the performance of the employee's services for the government, the employee concerned shall be provided an opportuntiy to explain the conflict or appearance of conflict in accordance with the procedure set out in § 3.8.

§ 3.86 Confidentiality of employees' statements.

Unlike the SF 278, each FEMA Form 11-1 and each supplementary statement shall be held in confidence by FEMA. To insure this confidentiality, the OPM regulations provide that:

(a) FEMA shall designate which officials and employees are to review and retain the statements;

(b) Officials and employees designated under paragraph (a) of this section are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part; and

(c) FEMA may not disclose information from a statement except as the OPM or the Director may determine for good cause shown.

§ 3.87 Employees' complaint on filing requirement.

Employees have the opportunity for review through the FEMA grievance procedures of a complaint by an employee that the position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 3.88 Employees not required to submit statements.

Employees in positions that meet the criteria in § 3.80 may be excluded from the reporting requirement when the Ethics Counselor determines that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 3.89 Information not known to employees.

If any information required to be included on a statement or supplementary statement, including holdings placed in trust, is not known to the employee but is know to another person, the employee shall request that other person to submit information in the employee's behalf.

Subpart E—Post Employment Conflicts of Interest

SOURCE: 45 FR 17148, Mar. 18, 1980, unless otherwise noted.

§ 3.100 Scope.

This part contains rules governing discipline of a former officer or employee of the Federal Emergency Management Agency because of a post employment conflict of interest. Such discipline may include prohibition from practice before the agency as these terms are defined in this part.

§ 3.101 Definitions.

For the purpose of this part—

(a) The term "agency" means the Federal Emergency Management Agency and includes the U.S. Fire Administration which has been designated as a separate statutory agency by rule of the Office of Government Ethics.

(b) The term "General Counsel" means the General Counsel of the agency.

(c) The term "practice" means any informal or formal appearance before, or, with the intent to influence, any oral or written communications to the agency on a pending matter of business on behalf of any other person (except the United States).

§ 3.102 General Counsel.

The General Counsel shall initiate and provide for the conduct of disciplinary proceedings involving former employees of the agency as authorized by 18 U.S.C. 207(j) and perform such other duties as are necessary or appropriate to carry out his/her functions under this part. The General Counsel reserves the right to issue such special orders as he/she may consider proper in any case within the purview of this part.

§ 3.103 Records.

There are made available to public inspection at the Office of General Counsel the roster of all persons prohibited from practice before the agency. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the agency.

§ 3.104 Interpretative standards.

A determination that a former officer or employee of the agency violated 18 U.S.C. 207 (a), (b), or (c) will be made in conformance with the standards established in the interpretative regulations promulgated by the Office of Personnel Management, 5 CFR Part 737.

§ 3.105 Authority to prohibit appearances.

Pursuant to 18 U.S.C. 207(j), if the General Counsel finds, after notice and opportunity for a hearing, that a former officer or employee of the agency violated 18 U.S.C. 207 (a), (b), or (c), the General Counsel in his/her discretion may prohibit that individual from engaging in practice before the agency for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 3.106 Receipt of information concerning former employees.

(a) If an officer or employee of the Agency has reason to believe that a former officer or employee of the Agency has violated any provision of this part, or if any such officer or employee received information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Federal Emergency Management Agency. If any other person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Agency. The Inspector General shall refer any information he/she deems warranted to the General Counsel.

(b) The General Counsel shall coordinate proceedings under this part with the Office of Government Ethics and with the Department of Justice in cases where the agency is in receipt of information regarding a possible violation of 18 U.S.C. 207 (5 CFR 27(a)(2)(ii)) or in cases where the Department of Justice initiates criminal prosecution.

§ 3.107 Conferences.

(a) *In general.* The General Counsel may confer with a former officer or employee concerning allegations of misconduct irrespective of whether an administrative disciplinary proceeding has been instituted against him or her. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Voluntary suspension.* A former officer or employee, in order to avoid the institution or conclusion of a proceeding, may offer his/her consent to suspension from practice before the Agency. The General Counsel in his/her discretion, may suspend a former officer or employee in accordance with the consent offered.

§ 3.108 Institution of proceeding.

Whenever the General Counsel has reason to believe that any former officer or employee of the Agency has violated 18 U.S.C. 207 (a), (b) or (c), he/she may reprimand such person or institute an administrative disciplinary proceeding for that person's suspension from practice before the Agency. The proceeding shall be instituted by a complaint which names the respondent and is signed by the General Counsel and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a reprimand will not be given nor will a proceeding be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

§ 3.109 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer as required.

§ 3.110 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to him/her at the last address known to the General Counsel. If service is made upon the respondent or his/her attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the General Counsel, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the General Counsel, Federal Emergency Management Agency, 1725 I Street, N.W., Washington, DC 20472. All papers shall be filed in duplicate.

§ 3.111 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the General Counsel or the Administrative Law Judge. The answer shall be filed in duplicate with the General Counsel.

(b) *Contents.* The answer shall contain a statement of facts which constitutes the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact he/she possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the General Counsel or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

§ 3.112 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the General Counsel may file a reply in his/her discretion or at the request of the Administrative Law Judge.

§ 3.113 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 3.114 Motions and requests.

Motions and requests may be filed with the General Counsel or with the Administrative Law Judge.

§ 3.115 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative.

§ 3.116 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the administrative disciplinary proceedings under this part.

(b) *Power of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a

hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Assess the responsible party extraordinary costs attributable to the location of a hearing;

(10) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(11) Make initial decisions.

§ 3.117 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension of a former officer or employee from practice before the Agency. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Public access to hearings.* Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties (such as tax information) is likely to be adduced at the hearing, it will remain closed. A request for an open hearing must be included in the answer to be considered.

(c) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make a decision against the absent party by default.

§ 3.118 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension of a former officer or employee from practice before the Agency. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 3.109 may be admitted.

(c) *Proof of documents.* Official documents, records and papers of the Agency shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Agency.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 3.119 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the Administrative Law Judge, be taken by either the General Counsel or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Agency who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 3.120 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Agency, a copy thereof will be supplied to the respondent either without charge or upon payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

§ 3.121 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 3.122 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension from practice before the Agency or other appropriate disciplinary action, or an order of dismissal of the complaint. In any decision of the Administrative Law Judge ordering suspension from practice or other disciplinary action the respondent shall be advised that such disciplinary action shall be subject to review in an appropriate United States district court. The Administrative Law Judge shall file the decision with the Director of the Federal Emergency Management Agency and shall transmit a copy thereof to the respondent or his/her attorney of record. In the absence of an appeal to the Director, Federal Emergency Management Agency, the decision of the Administrative Law Judge shall without further proceedings become the decision of the Agency 30 days from the date of the Administrative Law Judge's decision.

§ 3.123 Appeal to the Director, Federal Emergency Management Agency.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Director, Federal Emergency Management Agency. The appeal shall be filed in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the General Counsel, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director, Federal Emergency Management Agency. If the reply is filed by the General Counsel, he/she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the General Counsel shall transmit the entire record to the Director, Federal Emergency Management Agency.

§ 3.124 Decision of the Director, Federal Emergency Management Agency.

On appeal from the initial decision of the Administrative Law Judge, the Director, Federal Emergency Management Agency will make the agency decision. In making his/her decision, the Director, Federal Emergency Management Agency will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Director's decision shall be transmitted to the respondent. Any decision ordering disciplinary action shall contain provision that such disciplinary action is subject to review in an appropriate United States district court.

§ 3.125 Notice of disciplinary action.

(a) Upon the issuance of a final order suspending a former officer or employee from practice before the Agency, the General Counsel shall give notice thereof to appropriate officers and employees of the Agency. Officers and employees of the Agency shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Agency during the period of suspension.

(b) The General Counsel shall take other appropriate disciplinary action as may be required by the final order.

APPENDIX A—STATUTES GOVERNING CONDUCT OF FEDERAL EMPLOYEES

There are numerous statutes pertaining to the ethical and other conduct of Federal employees. The important ones of general applicability are referred to in this Appendix.

A. Bribery and Graft

.01 Title 18, U.S.C., Section 201, prohibits anyone from bribing or attempting to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent (a) to influence any official act by him, (b) to influence him to commit or allow any fraud on the United States, or (c) to induce him to do or omit to do any act in violation of his lawful duty. As used in Section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence his tesimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. Compensation to Officers and Employees in Matters Affecting the Government

.01 Title 18 U.S.C., Section 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, Section 203 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in FEMA, or

(b) If the special Government employee has served in FEMA no more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

.01 Title 18 U.S.C., Section 205, prohibits an officer or employee, otherwise than in the performance of his official duties from:

(a) Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

(b) Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in FEMA.

(b) If the special Government employee has served no more than 60 days during the preceding period of 365 days, Section 205 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 205 does not preclude:

(a) An employee, if not inconsistent with faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

(b) An employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

(a) An employee from acting as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee or which are the subject of his official responsibility, provided the head of the operating unit concerned approves; or

(b) A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of the United States provided the Director or designee shall certify in writing that the national interest so requires, and such certification shall be published in the FEDERAL REGISTER.

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. Disqualification of Former Officers and Employees in Matters Connected With Former Duties or Official Responsibilities; Disqualification of Partners

Title 18 U.S.C., Section 207 deals with former employees and possible conflicts of interest.

E. Acts Affecting a Personal Financial Interest

.01 Title 18, U.S.C., Section 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

F. Salary of Government Officials and Employees

.01 Title 18, U.S.C., Section 209, prohibits:

(a) An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality, and

(b) Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a violation of subparagraph .01(a) of this section.

.02 Section 209:

(a) Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer;

(b) Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

(c) Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. Code of Ethics for Government Service

"Code of Ethics for Government Service", House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

"Any Person in Government Service Should:

"PUT loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"NEVER use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. Prohibitions

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918). An individual may not accept or hold a position in the Government of the United States if he:

(a) Advocates the overthrow of our constitutional form of Government;

(b) Is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(c) Participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(d) Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

.03 The prohibitions in 2 U.S.C. 441 i, against receiving any single honorarium in excess of $2,000, or total honorariums in excess of $25,000 in any calendar year.

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 788); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g. confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Federal Emergency Management Agency.

.05 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 7119).

.06 The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

.07 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.08 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging in whole or in part, any form of transportation request is prohibited.

.09 The prohibitions against:

(a) Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his own use or the use of another person.

(b) Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he is not authorized to retain, fails to render his accounts for same as provided by law, is guilty of embezzlement.

(c) Embezzlement of the money or property of another person in the possession of the employee by reason of his employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his own use the money or property of another which comes under his control as the result of his employment.

.10 The prohibition against unauthorized removal or use of documents relating to claims from or by the Government (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.11 The prohibition against proscribed political activities, including the following, among others:

(a) Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

(b) Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

(c) Offering or promising to pay anything of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

(d) Soliciting or receiving, either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

(e) Using official authority to interfere with a Federal election (18 U.S.C. 595);

(f) Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

(g) Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

(h) Soliciting or receiving (by any person) anything of value for any political purpose whatever on any Government premises (18 U.S.C. 603);

(i) Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 602);

(j) Payment of a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607);

(k) Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles, the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

.12 The prohibition against an employee acting as the agent of a foreign principal registered under the Federal Agents Registration Act (18 U.S.C. 219).

[44 FR 50276, Aug. 27, 1979]

PART 4—SECURITY [RESERVED]

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

Subpart A—General Provisions

Sec.
5.1 Scope and purposes of part.
5.2 Application.
5.3 Definitions.
5.4 Availability of records.
5.5 Exemptions.
5.6 Congressional information.
5.7 Records of other agencies.
5.8 Records involved in litigation or other judicial process.
5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

5.20 Publication of rules and general policies.
5.21 Effect of failure to publish.
5.22 Coordination of publication.
5.23 Incorporation by reference.

Sec.
5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.
5.25 Available materials.
5.26 Rules for public inspection and copying.
5.27 Deletion of identifying details.
5.28 Indexes.
5.29 Effect of failure to make information materials available.

Subpart C—Fees

5.40 Copies of FEMA records available at a fee.
5.41 FEMA publications.
5.42 Exemptions from or reduction of fee.
5.43 Searches.
5.44 Prepayment of fees over $25.
5.45 Form of payment.
5.46 Fee schedule.
5.47 Appeals regarding fees.

Subpart D—Described Records

5.50 General.
5.51 Submission of requests for described records.
5.52 Review of requests.
5.53 Approval of request.
5.54 Denial of request for records.
5.55 Appeal within FEMA of denial of request.
5.56 Extension of time limits.
5.57 Exhaustion of administrative remedies.
5.58 Judicial relief available to the public.
5.59 Disciplinary action against employees for "arbitrary or capricious" denial.
5.60 Contempt for noncompliance.

Subpart E—Exemptions

5.70 General.
5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.
5.72 Executive privilege exemption.

Subpart F—Supoena or Other Legal Demands for Records and Authentication of Copies of Records

5.80 Service of subpoena or other legal demand.
5.81 Compliance with subpoena or other legal demand.
5.82 Authentication and attestation of copies.

APPENDIX A—LOCATIONS AT WHICH RECORD MATERIALS ARE AVAILABLE FOR PUBLIC INSPECTION AND COPYING

AUTHORITY: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978, 43 FR 41943; and EO 12127 (effective April 1, 1979), 44 FR 19367.

SOURCE: 44 FR 50287, Aug. 27, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 5.1 Scope and purposes of part.

This part sets forth policies and procedures concerning the availability of and disclosure of records and information held by the Federal Emergency Management Agency (FEMA) in accordance with 5 U.S.C. 552, popularly known as the "Freedom of Information Act," (FOIA).

§ 5.2 Application.

This part applies to all records and information materials generated, developed, or held by FEMA at Headquarters, in Regions, or in the field, or any component thereof.

§ 5.3 Definitions.

For purposes of the part, the following terms have the meanings ascribed to them in this section:

(a) *Records.* "Records" means all books, papers, maps, photographs, or other doucmentary materials, regardless of physical form or characteristics made or received by FEMA in pursuance of Federal Law or in connection with the transaction of public business and preserved, or appropriate for preservation, as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of FEMA or because of the information value of data contained therein. The term does not include:

(1) Material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents; or

(2) Objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles or equipment; or

(3) Formulae, designs, drawings, research data, computer programs, technical data packages, and the like, which are not considered "records" within the Congressional intent of reference because of development costs, utilization, or value. These items are considered exploitable resources to be utilized in the best interest of *all* the public and are not preserved for informational value nor as evidence of agency functions. Requests for copies

of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of these resources. Requests to inspect this material to determine its content for informational purposes shall normally be granted, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for patent information and certain formulae, or is inconsistent with another significant and legitimate governmental purpose.

(b) *Reasonably Described.* "Reasonably described," when applied to a request record, means identifying it to the extent that it will permit the location of the particular document with a reasonable effort.

(c) *Agency.* "Agency," as defined in § 552(e) of Title 5 U.S.C., includes any executive department, military department, government corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(d) *Headquarters FOIA Officer.* The Director, Office of Public Affairs or his/her designee.

(e) *Regional FOIA Officer.* The Regional Director, or his/her designee.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1421, Jan. 7, 1980]

§ 5.4 Availability of records.

(a) FEMA records are available to the greatest extent possible for keeping with the spirit and intent of FOIA and will be furnished promptly to any member of the public upon request addressed to the office designated in § 5.26. The person making the request need not have a particular interest in the subject matter, nor must he provide justification for the request.

(b) The requirement of 5 U.S.C. 552 that records be available to the public refers only to records in being at the time the request for them is made. FOIA imposes no obligation to compile a record in response to a request.

§ 5.5 Exemptions.

Requests for FEMA records may be denied if disclosure is exempted under the provisions of 5 U.S.C. 552, as outlined in Subpart E. Usually, except when a record is classified, or when disclosure would violate any other Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. The authority for nondisclosure will not be invoked unless there is compelling reason to do so.

§ 5.6 Congressional information.

Nothing in this part authorizes withholding information from the Congress except when executive privilege is invoked by the President.

§ 5.7 Records of other agencies.

If a request is submitted to FEMA to make available current records which are the primary responsibility of another agency, FEMA will refer the request to the agency concerned for appropriate action. FEMA will advise the requester that the request has been forwarded to the responsible agency.

§ 5.8 Records involved in litigation or other judicial process.

Where there is reason to believe that any records requested may be involved in litigation or other judicial process in which the United States is a party, including discovery procedures pursuant to the Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, the request shall be referred to the General Counsel.

§ 5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Policies and procedures of any of FEMA's predecessor agencies inconsistent with this regulation are superseded to the extent of that inconsistency.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

§ 5.20 Publication of rules and general policies.

In accordance with 5 U.S.C. 552(a)(1), there are separately stated and currently published, or from time to time there will be published, in the FEDERAL REGISTER for the guidance of the public, the following general information concerning FEMA:

(a) Description of the organization of the Headquarters Office and regional and other offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statement of the general course and method by which FEMA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by FEMA.

(e) Each amendment, revision, or repeal of the materials described in this section. Much of this information will also be codified in this Subchapter A.

§ 5.21 Effect of failure to publish.

5 U.S.C. 552(a)(1) provides that, except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or to be adversely affected by, a matter required to be published in the FEDERAL REGISTER and not so published.

§ 5.22 Coordination of publication.

The General Counsel, FEMA, is responsible for coordination of FEMA materials required to be published in the FEDERAL REGISTER.

§ 5.23 Incorporation by reference.

When deemed appropriate, matter covered by this Subpart, which is reasonably available to the class of persons affected thereby may be incorporated by reference in the FEDERAL REGISTER in accordance with standards prescribed from time to time by the Director of the Federal Register (see 1 CFR Part 51).

§ 5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.

FEMA will make available for public inspection and copying the material described in 5 U.S.C. 552(a)(2) as enumerated in § 5.25 and an index of those materials as described in § 5.28, at convenient places and times.

§ 5.25 Available materials.

FEMA materials which are available under this Subpart are as follows:

(a) Final opinions and orders made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by FEMA and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to staff that affect a member of the public, unless such materials are promptly published and copies offered for sale.

§ 5.26 Rules for public inspection and copying.

(a) *Locations.* Materials are available for public inspection and copying at the locations set out in Appendix A to this part.

(1) Headquarters, Federal Emergency Management Agency, 1725 I Street, NW., Washington, DC 20472.

(2) Regional Offices:

(i) Region One—15 New Chardon Street, Boston, Massachusetts 02114.

(ii) Region Two—90 Church Street, Room 801-B, New York, NY 10007.

(iii) Region Three—Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106.

(iv) Region Four—1371 Peachtree Street, NE., Atlanta, GA 30309.

(v) Region Five—One North Dearborn Street, Chicago, IL 60602.

(vi) Region Six—Earle Cabell Building, 1100 Commerce Street, Dallas, TX 75242.

(vii) Region Seven—Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

(viii) Region Eight—Room 311, 909 17th Street, Denver, CO 80202.

(ix) Region Nine—450 Golden Gate Avenue, P.O. Box [illegible], San Francisco, CA 94102.

(x) Region Ten—Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101.

(b) *Time.* Materials will be made available for public inspection and copying during the normal hours of business.

(c) *Copying.* FEMA will furnish reasonable copying services at fees specified in Subpart C. Such reproduction services, as are required, will be arranged by the Administrative Services Division in the headquarters or by regional offices as appropriate.

(d) *Handling of Materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. FEMA personnel making materials available will ensure that all materials provided for inspection and copying are returned in the same condition as provided.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

§ 5.27 Deletion of identifying details.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, FEMA may delete identifying details when making available or publishing an opinion, statement of policy, interpretation, or staff manual or instruction. However, the justification for each deletion will be explained fully in writing, and will require the concurrence of the General Counsel. A copy of the justification will be attached to the material containing the deletion and a copy will also be furnished to the Headquarters FOIA Officer or appropriate Regional Director.

§ 5.28 Indexes.

FEMA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 5.25. FEMA will publish quarterly and make available copies of each index or supplements thereto. The indexes will be maintained for public inspection at the location described in § 5.26.

§ 5.29 Effect of failure to make information materials available.

Materials requested to be made available pursuant to § 5.24 that affect a member of the public may be relied upon, used, or cited as precedent by FEMA against any private party only if (a) they have been indexed and either made available or published as required by 5 U.S.C. 552(a)(2), or (b) the private party has actual and timely notice of their terms.

Subpart C—Fees

§ 5.40 Copies of FEMA records available at a fee.

One copy of FEMA records not available free of charge will be provided at a fee as provided in § 5.46. A reasonable number of additional copies will be provided for the applicable fee where reproduction services are not readily obtainable from private commercial sources.

§ 5.41 FEMA publications.

Anyone may obtain FEMA publications without charge from the FEMA Headquarters, Regional Officer and from the U.S. Army Publication Center, 2800 Eastern Boulevard, Baltimore, MD 21220 in accordance with standard operating procedures, including limitation on numbers of specific individual publications. FEMA Films may be obtained on loan or certain of these films may be purchased, in which case fees will be charged as set out in a FEMA catalogue. Non-exempt FEMA research reports are available from the National Technical Information Service, United States Department of Commerce which establishes its own fee schedule. Charges, if any, for these items and similar user charges are established in accordance with other provisions of law as, for example, 31 U.S.C. 483a and are not deemed search and duplication charges hereunder.

§ 5.42 Exemptions from or reduction of fee.

(a) When the Headquarters FOIA Officer or Regional Director handling the request for FEMA records determines that at least one of the following conditions exist, the fee requirement shall be waived and one copy of the FEMA records provided without charge to the requestor:

(1) When the incremental cost of collecting the fee would be an unduly large part of or an amount greater than the fee; a fee of less than $10 is considered as meeting this requirement.

(2) When the reproduction is for a foreign, state, or local Government or international agency and furnishing it without charge is an appropriate courtesy; or

(3) When furnishing the records without charge conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former employees.

(b) Records may be furnished without charge, or at a reduced charge if the Headquarters FOIA Officer or Regional Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 5.43 Searches.

(a) The time spent in the following activities may be computed in determining "search time" subject to applicable fees as provided in § 5.46.

(1) Time spent in trying to locate FEMA records which come within the scope of the request;

(2) Time spent either in transporting a necessary agency searcher to a place of record storage or in transporting records to the location of a necessary agency searcher (FEMA must document in writing the necessity of transporting either the searcher or the records); and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) The time spent in the following activities may not be computed in determining search time subject to applicable fees as provided in § 5.46.

(1) Time spent in examining a requested record for the purpose of determining whether an exemption can and should be asserted;

(2) Time spent in deleting exempt matter being withheld from records to be made available;

(3) Time spent in monitoring a requester's inspection of agency records made available; and

(4) Time spent in operating reproduction facilities.

§ 5.44 Prepayment of fees over $25.

(a) When the Headquarters FOIA Officer or Regional FOIA Officer handling a request for FEMA records determines that the anticipated total fee (search and reproduction) is likely to exceed $25, the requestor shall be notified of the requirement to prepay the anticipated fee prior to FEMA's commencing its search or reproduction. FEMA will remit the excess paid by the requestor or bill the requestor for an additional amount according to variations between the final fee charged and the amount prepaid.

(b) When a FEMA official notifies a requestor of the necessity of prepayment as provided in paragraph (a) of this section, the official also shall notify the requestor that the computation of the applicable time limits for FEMA's response to an initial request for records or an appeal will be suspended from the mailing date of the notification of requirement to prepay until the receipt of the prepayment.

§ 5.45 Form of payment.

Payment shall be by check or money order payable to the Treasurer of the United States and shall be addressed to the official designated by FEMA in correspondence with the requestor or to the Headquarters FOIA Officer or Regional FOIA Officer, as appropriate.

§ 5.46 Fee schedule.

In computing applicable fees, FEMA will consider only the following costs in providing the requested records.

(a) *Reproduction fees.* (1) There will be a minimum fee of $2.00 for each request for reproducing copies of FEMA records up to and including material

8½ x 14 inches, plus the fee for each page as shown below:

Minimum fee first 6 copies $2.00
Forms per copy .10
Reports per page .10

(2) The fee for reproducing copies of FEMA records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources.

(b) *Search Fee.* (1) The standard search fee shall be $4 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(2) When professional staff must be used to search for the requested records because clerical staff would be unable to locate them, the search fee shall be $8 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(3) When the search includes nonpersonnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee shall be the direct cost to FEMA.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

§ 5.47 Appeals regarding fees.

A requestor whose application for a fee waiver or a fee reduction is denied may appeal that decision to the Deputy Director in the manner prescribed in Subpart D.

Subpart D—Described Records

§ 5.50 General.

(a) Except for records made available pursuant to Subpart B FEMA shall promptly make records available to a requestor pursuant to a request which reasonably described such records unless FEMA invokes an exemption pursuant to Subpart E. Although the burden of reasonable description of the records rests with the requestor, FEMA will assist in identification to the extent practicable. Where requested records may be involved in litigation or other judicial proceedings in which the United States is a party, the procedures set forth under § 5.8 shall be followed.

(b) Upon receipt of a request which does not reasonably describe the records requested, FEMA may contact the requestor to seek a more specific description. The 10-day time limit set forth in § 5.52 will not start until a request reasonably describing the records is received in the office of the appropriate official identified in § 5.51.

§ 5.51 Submission of requests for described records.

(a) For records located in the FEMA Headquarters, requests shall be submitted in writing, to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC 20472. For records located in the FEMA Regional Offices, requests shall be submitted to the appropriate Regional FOIA Officer, at the address listed in § 5.26. Requests should bear the legend "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-day time limit for agency determinations set forth in § 5.52 shall not start until a request is received in the office of the appropriate official identified in this paragraph.

(b) The Headquarters FOIA Officer shall respond to questions concerning the proper office to which Freedom of Information requests should be addressed.

§ 5.52 Review of requests.

(a) Upon receipt of a request for information, the Headquarters FOIA Officer, or the Regional FOIA Officer for a regional office, will forward the request to the FEMA office which has custody of the record.

(b) Upon any request for records made pursuant to § 5.20, § 5.24, or § 5.51, the office having custody of the records shall determine within 10 days (excepting Saturdays, Sundays, and legal public holidays), after receipt of any such request in the office of the appropriate official identified in § 5.51 whether to comply with the request. If the request is approved, the office having custody of the record shall notify the requestor and the Headquarters FOIA Officer whether request originated in Headquarters, Region or field.

(c) When a request is received for a record which:

(1) Was obtained by FEMA from a non-U.S. Government source; or

(2) Contains information obtained by FEMA from a non-U.S. Government source; and because of the source and the nature of the records or information, there is reason to believe that the source of the information or record may object to release or may have an enforceable right to prevent release, prompt notification of intended release shall be given to the source. Release shall normally be withheld until the source has a reasonable time to comment on the proposed release. Comments received shall be considered in determining the releasability of the document. When the source advises that it is seeking a restraining order or other court action to prevent release, release will normally not be made pending the outcome of the court action.

§ 5.53 Approval of request.

When a request is approved, records will be made available promptly in accordance with the terms of the regulation. Copies may be furnished or the records may be inspected and copies as provided in § 5.26.

§ 5.54 Denial of request for records.

(a) Each of the following officials within FEMA, or any official designated to act for the official, shall have the authority to make initial denials of requests for disclosure of records within his or her custody, and shall, in accordance with 5 U.S.C. 552(a)(6)(C), be the responsible officer for denials of records made under this part.

(1) At Headquarters:

(i) The Deputy Director

(ii) Associate Directors or Office Directors

(iii) Assistant Director for Training and Education

(iv) Federal Insurance Administrator

(v) U.S. Fire Administrator

(vi) Director, Operations Support

(vii) Director, Personnel

(viii) Director, Finance and Administration

(ix) Director, Program Evaluation and Research

(x) General Counsel

(xi) Inspector General

(2) At Regions—Regional Directors.

(b) If a request is denied, the appropriate official listed in paragraph (a) of this section shall except as provided in § 5.56 advise the requestor within 10 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request by the official specified in § 5.52 and furnish written reasons for the denial. The denial will (1) describe the record or records requested, (2) state the reasons for nondisclosure pursuant to Subpart E, (3) state the name and title or position of the official responsible for the denial of such request, and (4) state the requestor's appeal rights.

(c) In the event FEMA cannot locate requested records the appropriate official specified in paragraph (a) of this section will inform the requestor (1) that the agency has determined at the present time to deny the request because the records have not yet been found or examined, but (2) that the agency will review the request within a specified number of days, when the search or examination is expected to be complete. The denial letter will state the name and title or position of the official responsible for the denial of such request. In such event, the requestor may file an agency appeal immediately, pursuant to § 5.55.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

§ 5.55 Appeal within FEMA of denial of request.

(a) A requestor denied access, in whole or in part, to FEMA records may appeal that decision within FEMA. All appeals should be addressed to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC regardless of whether the denial being appealed was made at Headquarters, in a field office, or by a Regional Director.

(b) An appeal must be received in the Headquarters FOIA Office no later than thirty calendar days after receipt by the requestor of the initial denial access in the case of a total denial, or thirty calendar days after receipt by the requestor of records made available in the case of a partial denial.

(c) An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend, "FREEDOM OF INFORMATION APPEAL," conspicuously marked on both the face of the appeal letter and on the envelope. FEMA has twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of an appeal to make a determination with respect to such appeal. The twenty day time limit shall not begin to run until the appeal is received by the Headquarters FOIA Officer. Misdirected appeals should be promptly forwarded to that office.

(d) The Headquarters FOIA Officer will submit the appeal to the Deputy Director for final administrative determination.

(e) The Deputy Director shall be the deciding official on all appeals except in those cases in which the initial denial was made by him/her. If the Deputy Director made the initial denial, the Director will be the deciding official on any appeal from that denial. In the absence of the Deputy Director, or in case of a vacancy in that office, the Director may designate another FEMA official to perform the Deputy's functions.

(f) If an appeal is filed in response to a tentative denial pending locating and/or examination of records, as described in § 5.53(c), FEMA will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for FEMA's response to the requestor's appeal which FEMA will continue to process regardless of the response under this subsection.

(g) If a requestor files suit pending an agency appeal, FEMA nonetheless will continue to process the appeal, and will furnish a response within the twenty day time limit set out in paragraph (c) of this section.

(h) If, on appeal, the denial of the request for records is in whole or in part upheld, the Deputy Director will promptly furnish the requestor a copy of the ruling in writing within the twenty day time limit set out in paragraph (c) of this section except as provided in § 5.55. The notification letter shall contain:

(1) A brief description of the record or records requested; (2) a statement of the legal basis for nondisclosure; (3) a statement of the name and title or position of the official or officials responsible for the denial of the initial request as described in § 5.54 and the denial of the appeal as described in paragraph (f) of this section, and (4) a statement of the requestor's rights of judicial review.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

§ 5.56 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed in § 5.52 and § 5.55 may be extended by an official named in § 5.54(a) who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a determination is expected. Such notice will specify no date that would result in an extension of more than ten work days. In unusual circumstances, the Headquarters FOIA Officer may authorize more than one extension, divided between the initial request stage and the appeals stage, but in no event will the combined periods of extension exceed ten work days. As used in this subsection, "unusual circumstances" include only those circumstances where extension of time is reasonably necessary to the proper processing of the particular request. Examples include:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency or with a non-Federal source having a substantial interest in the determination of the request or among two or more components of FEMA having substantial subject matter interest therein.

§ 5.57 Exhaustion of administrative remedies.

Any person making a request to FEMA for records under this part shall be deemed to have exhausted his administrative remedies with respect to the request if the agency fails to comply with the applicable time limit provisions set forth in § 5.52 and § 5.55.

§ 5.58 Judicial relief available to the public.

Upon denial of a requestor's appeal by the Deputy Director the requester may file a compliant in a district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency resords are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B).

§ 5.59 Disciplinary action against employees for "arbitrary or capricious" denial.

Pursuant to 5 U.S.C. 552(a)(4)(F), whenever the district court, described in § 5.58 orders the production of any FEMA records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether FEMA personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel in the Merit Systems Protection Board is required to initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who primarily was responsible for the withholding. The Special Counsel after investigation and consideration of the evidence submitted, submits findings and recommendations to the Director of FEMA and sends copies of the findings and recommendations to the officer or employee or his or her representative. The law requires the Director to take any corrective action which the Special Counsel recommends.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

§ 5.60 Contempt for noncompliance.

In the event of noncompliance by FEMA with an order of a district court pursuant to § 5.58, the district court may punish for contempt the FEMA employee responsible for the noncompliance, pursuant to 5 U.S.C. 552(a)(4)(G).

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

Subpart E—Exemptions

§ 5.70 General.

The exemptions enumerated in 5 U.S.C. 552(b), under which the provisions for availability of records and informational materials will not apply, are general in nature. FEMA will decide each case on its merits in accordance with the FEMA policy expressed in Subpart A.

§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.

5 U.S.C. 552(b) provides that the requirements of the statute do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified pursuant to such Executive Order.

(b) Related solely to the internal personnel rules and practices of an agency.

(c) Specifically exempted from disclosure by statute other than section 552(b) of Title 5, provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (2) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source:

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells. Any reasonable segregable portion of a record shall be provided to any person requesting the record after deletion of the portions which are exempt under this section.

§ 5.72 Executive privilege exemption.

Where application of the executive privilege exemption is desired, the matter shall be forwarded to the Director for consideration. If the request for information is Congressional, only the President may invoke the exemption. Presidential approval is not necessarily required if the request for information is in connection with judicial or adjudicatory proceedings or otherwise. In connection with judicial proceedings, the response shall be coordinated with the Department of Justice.

Subpart F—Subpoena or Other Legal Demands for Records and Authentication of Copies of Records

§ 5.80 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand by a court or other authority for the production of records held by FEMA should be addressed to the General Counsel, FEMA, Washington, DC 20472. For Regional records the subpoena should be addressed to the appropriate Regional Director listed in § 5.26.

(b) When such a subpena or demand is served on any employee of FEMA other than as provided in paragraph (a) of this section, unless otherwise directed by the Director such employees shall decline respectfully to produce such records on the ground that such employee is without authority under this Subpart F to do so.

§ 5.81 Compliance with subpoena or other legal demand.

Officials serviced with subpoena will comply with the subpoena or demand insofar as it is practicable by submitting authenticated copies of the records. Original records should be provided only if necessary.

§ 5.82 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, and heads of offices having the records, the General Counsel, and in the regions, the Regional Directors and their designees are authorized to authenticate and attest for and in the name of the Director, copies or reproductions of the records. Appropriate fees will be charged for such copies or reproduction.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980]

APPENDIX A—LOCATIONS AT WHICH RECORD MATERIALS ARE AVAILABLE FOR PUBLIC INSPECTION AND COPYING

A. Headquarters, Federal Emergency Management Agency, 1725 I Street, N.W., Washington, DC 20472
B. Regional Offices:
Region I, 150 Causeway Street, Room 710, Boston, MA 02114
Region II, 26 Federal Plaza, New York, NY 10007
Region III, Curtis Building—7th Floor, 6th and Walnut Streets, Philadelphia PA 19106
Region IV, Gulf Oil Building, Pershing Plaza, Suite 778, 1375 Peachtree Street, N.E., Atlanta, GA 31792
Region V, One N. Dearborn Street, Room 540, Chicago, IL 60602
Region VI, Federal Center—Room 206, Denton, TX 76201
Region VII, Old Federal Office Building, Room 405, 911 Walnut Street, Kansas City, MO 64106
Region VIII, Denver Federal Center, Building 710, Denver, CO 80225
Region IX, 211 Main Street, Room 220, San Francisco, CA 94105
Region X, Federal Regional Center, Bothell, WA 98011

[45 FR 1422, Jan. 7, 1980]

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Subpart A—General

Sec.
6.1 Purpose and scope of part.
6.2 Definitions.
6.3 Collection and use of information (Privacy Act statements).
6.4 Standards of accuracy.
6.5 Rules of conduct.
6.6 Safeguarding systems of records.
6.7 Records of other agencies.
6.8 Supoena and other legal demands.
6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.
6.10 Assistance and referrals.

Subpart B—Disclosure of Records

6.20 Conditions of disclosure.
6.21 Procedures for disclosure.
6.22 Accounting of disclosures.

Subpart C—Individual Access to Records

6.30 Form of requests.
6.31 Special requirements for medical records.
6.32 Granting access
6.33 Denials of access.
Sec.
6.34 Appeal of denial of access within FEMA.

Subpart D—Requests to Amend Records

6.50 Submission of requests to amend records.
6.51 Review of requests to amend records.
6.52 Approval of requests to amend records.
6.53 Denial of requests to amend records.
6.54 Agreement to alternative amendments.
6.55 Appeal of denial of request to amend a record.
6.56 Statement of disagreement.
6.57 Judicial review.

Subpart E—Report on New Systems and Alterations of Existing Systems

6.70 Reporting requirement.
6.71 Federal Register notice of establishment of new system or alteration of existing system.
6.72 Effective date of new system of records or alteration of an existing system of records.

Subpart F—Fees

6.80 Records available at fee.
6.81 Additional copies.
6.82 Waiver of fee.
6.83 Prepayment of fees over $25.
6.84 Form of payment.
6.85 Reproduction fees.

Subpart G—Exempt Systems of Records

6.86 General exemptions.
6.87 Specific exemptions.

AUTHORITY: Privacy Act of 1974, Pub. L. 93-579; 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978, 43 FR 41943; EO 12127, 44 FR 19367.

SOURCE: 44 FR 50293, Aug. 27, 1979, unless otherwise noted.

Subpart A—General

§ 6.1 Purpose and scope of part.

This part sets forth policies and procedures concerning the collection, use and dissemination of records maintained by the Federal Emergency Management Agency (FEMA) which are subject to the provision of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). These policies and procedures govern only those records as defined in § 6.2. Policies and procedures governing the disclosure and availability of records in general are in Part 5 of this chapter. This part also covers: (a) procedures for notification to individuals of a FEMA system of records pertaining to them; (b) guidance to individuals in obtaining information, including inspections of, and disagreement with, the content of records; (c) accounting of disclosure; (d) special requirements for medical records; and (e) fees.

§ 6.2 Definitions.

For the purpose of this part:

(a) "Agency" includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency (see 5 U.S.C. 552(e)).

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) "Maintain" includes maintain, collect, use, and disseminate.

(d) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to those concerning education, financial transactions, medical history, and criminal or employment history, and that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(e) "System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identification assigned to that individual.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) "Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

(h) "System manager" means the employee of FEMA who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

(i) "Subject individual" means the individual named or discussed in a record of the individual to whom a record otherwise pertains.

(j) "Disclosure" means a transfer of a record, a copy of a record, or any or all of the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(k) "Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(l) "Solicitation" means a request by an officer or employee of FEMA that an individual provide information about himself or herself.

(m) "Director" means the Director, FEMA.

(n) "Deputy Director" means the Deputy Director, FEMA, or, in the case of the absence of the Deputy Director, or a vacancy in that office, a person designated by the Director to perform the functions under this regulation of the Deputy Director.

(o) "Privacy Appeals Officer" means the Director of Office of Public Affairs or his/her designee.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.3 Collection and use of information (Privacy Act statements).

(a) *General:* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under FEMA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of Information:* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purpose for which the information will be used, the routine uses to be made of the information, and the effects on the individual, if any, of not providing the information. The Director, Finance and Administration and Regional Directors shall ensure that forms used to solicit information are in compliance with the act and these regulations.

(c) *Solicitation of Social Security Numbers:* Before an employee of FEMA requests an individual to disclose his or her social security number, the employee of FEMA shall ensure that either:

(1) The disclosure is required by Federal statute, or;

(2) The disclosure of a social security number was required under statute or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975. If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the FEMA employee who requests an individual to disclose the social security account number, shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting Information From Third Parties:* An employee of FEMA shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 6.4 Standards of accuracy.

The system manager shall ensure that all records which are used by FEMA to make determinations about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 6.5 Rules of conduct.

Employees of FEMA involved in the design, development, operation, or maintenance of any system of records or in maintaining any record, shall conduct themselves in accordance with the rules of conduct concerning the protection of personal information in § 3.25 of this chapter.

§ 6.6 Safeguarding systems of records.

(a) Systems managers shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(1) Official personnel folders, authorized personnel operating or work folders and other records of personnel actions effected during an employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualification, and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnished an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(2) System managers, at their discretion may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(3) A system manager shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to a subject individual or his or her representative as provided by this part.

§ 6.7 Records of other agencies.

If FEMA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of FEMA on behalf of that agency, FEMA will advise the requestor that the request has been forwarded to the responsible agency. Records in the custody of FEMA which are the primary responsibility of the Office of Personnel Management are governed by the rules promulgated by it pursuant to the Privacy Act.

§ 6.8 Subpoena and other legal demands.

Access to records in systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 5 of this chapter.

§ 6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.

Any policies and procedures in any issuances of FEMA or any of its predecessor agencies which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 6.10 Assistance and referrals.

Requests for assistance and referral to the responsible system manager or other FEMA employee charged with implementing these regulations should be made to the Privacy Appeals Officer, Federal Emergency Management Agency, Washington, D.C. 20472.

[45 FR 17152, Mar. 18, 1980]

Subpart B—Disclosure of Records

§ 6.20 Conditions of disclosure.

No employee of FEMA shall disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To officers or employees of FEMA who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) For a routine use as published in the annual notices in the FEDERAL REGISTER;

(d) To the Bureau of the Census for use pursuant to Title 13, United States Code;

(e) To a recipient who has provided FEMA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record subject to the following: The record shall be transferred in a form that is not individually identifiable. The written statement should include as a minimum (1) a statement of the purpose for requesting the records; and (2) certification that the records will be used only for statistical purposes. These written statements should be maintained as accounting records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Director specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health and safety of an individual to whom the record pertains. (Upon such disclosure, a notification must be sent to the last known address of the subject individual.)

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within their jurisdiction;

(j) To the Comptroller General or any duly authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 6.21 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requestor to obtain disclosure pursuant to § 6.20. Upon that verification and subject to other requirements of this part, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under the provisions of § 6.20 or other provisions of this part, the system manager shall deny the request in writing and shall inform the requestor of the right to submit a request for review and final determination to the Director or designee.

§ 6.22 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 6.20 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(b) The system manager also shall maintain in conjunction with the accounting of disclosures;

(1) A full statement of the justification for the disclosure.

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent to a disclosure given by the subject individual.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 6.20 (g) or of disclosures made from exempt systems the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 6.30 Form of requests.

(a) An individual who seeks access to his or her record or to any information pertaining to the individual which is contained in a system of records should notify the system manager at the address indicated in the FEDERAL REGISTER notice describing the pertinent system. The notice should bear the legend "Privacy Act Request" both on the request letter and on the envelope. It will help in the processing of a request if the request letter contains the complete name and identifying number of the system as published in the FEDERAL REGISTER; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the individual's association with FEMA; and any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager shall answer or acknowledge the request within 10 workdays of its receipt by FEMA.

(b) The system manager, at his discretion, may accept oral requests for access subject to verification of identity.

§ 6.31 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the U.S. Office of Personnel Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualifications or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, or the guardian or conservator of the individual.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 6.32 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make these records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by FEMA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10 day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and indicate when the records will be available.

(d) Records will be available for authorized access during normal business hours at the offices where the records are located. A requestor should be prepared to identify himself or herself by signature; i.e., to note by signature the date of access and/or produce other identification verifying the signature.

(e) Upon request, a system manager shall permit an individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged in accordance with Subpart F.

(f) An individual may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individual in the request. A system manager shall not make a record available to a third party for delivery to the subject individual except for medical records as outlined in § 6.31.

(g) An individual who selects another person to review, or to accompany the individual in reviewing or obtaining a copy of the record must, prior to the disclosure, sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosure is identical to the procedure for access to a record as set forth in this section.

§ 6.33 Denials of access.

(a) A system manager may deny an individual access to that individual's record only upon the grounds that FEMA has published the rules in the FEDERAL REGISTER exempting the pertinent system of records from the access requirement. These exempt systems of records are described in Subpart G of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the appropriate official listed below through normal supervisory channels:

(1) At Headquarters:

(i) The Deputy Director.

(ii) Associate Directors or Office Directors.

(iii) Assistant Director for Training and Education.

(iv) U.S. Fire Administrator.

(v) Federal Insurance Administrator.

(vi) Director, Operations Support.

(vii) Director, Personnel.

(viii) Director, Finance and Administration.

(ix) Director, Program Evaluation and Research.

(x) General Counsel.

(xi) Inspector General.

(2) At Regions: Regional Directors.

The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) In the event that the system manager serves in one of the positions listed in paragraph (b) of this section, he or she shall retain the responsibility for denying or granting the request.

(d) The appropriate official listed in paragraph (b) of this section shall, in consultation with the Office of General Counsel and such other officials as deemed appropriate, determine if the request record is contained with an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the above official shall notify the system manager to grant the request in accordance with § 6.32, or

(2) If the record is contained within an exempt system said official shall;

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requestor of a right to judicial review of that decision as provided in § 6.57, or

(ii) Notify the system manager to make record available to the requestor in accordance with § 6.31, notwithstanding the record's inclusion within an exempt system.

(e) The appropriate official listed in paragraph (b) of this section shall provide the Privacy Appeals Office with a copy of any denial of a requested access.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.34 Appeal of denial of access within FEMA.

A requestor denied access in whole or in part, to records pertaining to that individual, exclusive of those records for which the system manager is the Director, may file an administrative appeal of that denial. Appeals of denied access will be processed in the same manner as processing for appeals from a denial of a request to amend a record set out in § 6.55, regardless whether the denial being appealed is made at headquarters or by a regional official.

Subpart D—Requests to Amend Records

§ 6.50 Submission of requests to amend records.

An individual who desires to amend any record containing personal information about the individual should direct a written request to the system manager specified in the pertinent Federal Register notice concerning FEMA's systems of records. A current FEMA employee who desires to amend personnel records should submit a written request to the FEMA Director of Personnel, Washington, D.C. 20472. Each request should include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend "Privacy Act—Request to Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 6.51 Review of requests to amend records.

(a) The system manager shall acknowledge the receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment shall include the system manager's determination either to amend the record or to deny the request to amend as provided in § 6.53.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment and shall determine whether the request for the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and the existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by statute or Executive Order.

§ 6.52 Approval of requests to amend records.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary corrections to the record and shall send a copy of the corrected record to the individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that a correction has been made and the substance of the correction. Where practicable, the system manager shall advise the Privacy Appeals Officer that a request to amend has been approved.

§ 6.53 Denial of requests to amend records.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, he shall refer the request to amend and his determinations and recommendations to the appropriate official listed in § 6.33(b) through normal supervisory channels.

(b) If the official listed in § 6.33, after reviewing the request to amend a record, determines to amend the record in accordance with the request, said official promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 6.52.

(c) If the appropriate official listed in § 6.33, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the requestor shall be promptly advised in writing of the determination. The refusal letter (1) shall state the reasons for the denial of the request to amend; (2) shall include proposed alternative amendments, if appropriate; (3) shall state the requestor's right to appeal the denial of the request to amend; and (4) shall state the procedures for appealing and the name and title of the official to whom the appeal is to be addressed.

(d) The appropriate official listed in § 6.33 shall furnish the Privacy Appeals Officer a copy of each initial denial of a request to amend a record.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.54 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, he or she must notify the official who signed the denial. That official immediately shall instruct the system manager to make the necessary amendments in accordance with § 6.52.

§ 6.55 Appeal of denial of request to amend a record.

(a) A requestor who disagrees with a denial of a request to amend a record may file an administrative appeal of that denial. The requestor should address the appeal to the FEMA Privacy Appeals Officer, Washington, DC 20472. If the requestor is an employee of FEMA and the denial to amend involves a record maintained in the employee's Official Personnel Folder covered by an Office of Personnel Management Government wide system notice, the appeal should be addressed to the Assistant Director, Information Systems, Agency Compliance and Evaluation Group, Office of Personnel Management, Washington, DC 20415.

(b) Each appeal to the Privacy Act Appeals Officer shall be in writing and must be received by FEMA no later than 30 calendar days from the requestor's receipt of a denial of a request to amend a record. The appeal should bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Privacy Act Appeals Officer shall consult with the system manager, the official who made the denial, the General Counsel or a member of that office, and such other officials as may be appropriate. If the Privacy Act Appeals Officer in consultation with these officials, determines that the record should be amended, as requested, the system manager shall be instructed immediately to amend the record in accordance with § 6.52 and shall notify the requestor of that action.

(d) If the Privacy Act Appeals Officer, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Privacy Act Appeals Officer shall submit the file on the request and appeal, including findings and recommendations, to the Deputy Director for a final administrative determination.

(e) If the Deputy Director determines that the record should be amended as requested, he or she immediately shall instruct the system manager in writing to amend the record in accordance with § 6.52. The Deputy Director shall send a copy of those instructions to the Privacy Act Appeals Officer, who shall notify the requester of that action.

(f) If the Deputy Director determines to reject the appeal, the requestor shall immediately be notified in writing of that determination. This action shall constitute the final administrative determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal.

(2) Proposed alternative amendments, if appropriate, which the requestor subsequently may accept in accordance with § 6.54.

(3) Notice of the requestor's right to file a Statement of Disagreement for distribution in accordance with § 6.56.

(4) Notice of the requestor's right to seek judicial review of the final administrative determination, as provided in § 6.57.

(g) The final agency determination must be made no later than 30 workdays from the date on which the appeal is received by the Privacy Act Appeals Officer.

(h) In extraordinary circumstances, the Director may extend this time limit by notifying the requestor in writing before the expiration of the 30 workdays. The Director's notification will include a justification for the extension.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.56 Statement of disagreement.

Upon receipt of a final administrative determination denying a request to amend a record, the requestor may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement should include an explanation of why the requestor believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record, and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 6.22.

§ 6.57 Judicial review.

Within 2 years of receipt of a final administrative determination as provided in § 6.34 or § 6.55, a requestor may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requestor resides or has his or her principal place of business or in which the agency records are situated, or in the District of Columbia.

Subpart E—Report on New Systems and Alternations of Existing Systems

§ 6.70 Reporting requirement.

(a) No later than 90 calendar days prior to the establishment of a new system of records, the prospective system manager shall notify the Privacy Appeals Officer of the proposed new system. The prospective system manager shall include with the notification a completed FEMA Form 11-2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records proposed to be established. If the Privacy Appeals Officer determines that the establishment of the proposed system is in the best interest of the Government, then no later than 60 calendar days prior to the establishment of that system of records, a report of the proposal shall be submitted by the Director or a designee thereof, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(b) No later than 90 calendar days prior to the alteration of a system of records, the system manager responsible for the maintenance of that system of records shall notify the Privacy Appeals Officer of the proposed alteration. The system manager shall include with the notification a completed FEMA Form 11-2. System of Records Covered by the Privacy Act of 1974, and a justification for each system of records he proposes to alter. If it is determined that the proposed alteration is in the best interest of the Government, then, the Director, or a designee thereof, shall submit, no later than 60 calendar days prior to the establishment of that alteration, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(c) The reports required by this regulation are exempt from reports control.

(d) The Director may waive the time requirements set out in this section upon a finding that a delay in the establishing or amending the system would not be in the public interest and showing how the public interest would be adversely affected if the waiver were not granted and otherwise complying with OBM Circular A-108, and Transmittal Memorandums 1 and 3.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.71 Federal Register notice of establishment of new system or alteration of existing system.

Notice of the proposed establishment or alteration of a system of records shall be published in the FEDERAL REGISTER, in accordance with FEMA procedures when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Managment and Budget do not object to the establishment of a new system or records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days elapse from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt of an objection to the proposal. The notice shall include all of the information required to be provided in FEMA Form 11-2, System of Records Covered by the Privacy Act of 1974, and such other information as the Director deems necessary.

§ 6.72 Effective date of new system of records or alteration of an existing system or records.

Systems of records proposed to be established or altered in accordance with the provisions of this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 6.71.

Subpart F—Fees

§ 6.80 Records available at fee.

The system manager shall provide a copy of a record to a requestor at a fee prescribed in § 6.85 unless the fee is waived under § 6.82.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.81 Additional copies.

A reasonable number of additional copies shall be provided for the applicable fee to a requestor who indicates that he has no access to commercial reproduction services.

§ 6.82 Waiver of fee.

The system manager shall make one copy of a record, up to 50 pages, available without charge to a requestor who is an employee of FEMA. The system manager may waive the fee requirement for any other requestor if the cost of collecting the fee is an unduly large part of, or greater than, the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

§ 6.83 Prepayment of fees over $25.

If the system manager determines that the anticipated total fee is likely to exceed $25, the individual will be informed that the anticipated fee must be prepaid prior to FEMA's making the records available. FEMA will remit the excess paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 6.84 Form of payment.

Payment shall be by check or money order payable to The Federal Emergency Management Agency and shall be addressed to the system manager.

§ 6.85 Reproduction fees.

(a) There will be a minimum fee of $2.00 for each request for reproducing copies of FEMA records up to and including material 8½ x 14 inches, plus the fee for each page as shown below:

Minimum fee first 6 copies	$2.00
Forms per copy	.10
Reports per page	.10

(b) The fee for reproducing copies of FEMA records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources.

[45 FR 17152, Mar. 18, 1980]

Subpart G—Exempt Systems of Records

§ 6.86 General exemptions.

(a) Whenever the Director, Federal Emergency Management Agency, determines it to be necessary and proper, with respect to any system of records maintained by the Federal Emergency Management Agency, to exercise the right to promulgate rules to exempt such systems in accordance with the provisions of 5 U.S.C. 552a (j) and (k), each specific exemption, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for each exemption shall be published in the FEDERAL REGISTER as part of FEMA's Notice of Systems of Records.

(b) Exempt under 5 U.S.C. 552a(j)(2) from the requirements of 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(4) (G), (H), and (I), (e) (5) and (8) (f) and (g) of the Privacy Act.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552(j)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph (b) of this section.

General Investigative Files (FEMA/IG-2)—Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would give individuals an opportunity to learn whether they are of record either as suspects or as subjects of a criminal investigation; this would compromise the ability of the Federal Emergency Management Agency to complete investigations and identify or detect violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Individuals would be able (A) to take steps to avoid detection, (B) to inform co-conspirators of the fact that an investigation is being conducted, (C) to learn the nature of the investigation to which they are being sub-

jected, (D) to learn the type of surveillance being utilized, (E) to learn whether they are only suspects or identified law violators, (F) to continue to resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records, and (G) to destroy evidence needed to prove the violation.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would compromise its ability to complete or continue criminal investigations and to detect or identify violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Permitting access to records contained in the above-listed system of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways:

(A) By discovering the collection of facts which would form the basis for their arrest, (B) by enabling them to destroy evidence of criminal conduct which would form the basis for their arrest, and (C) by learning that the criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Granting access to ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning criminal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing law enforcement officers' established investigative tools and procedures. Further, granting access to investigative files and records could disclose the identity of confidential sources and other informers and the nature of the information which they supplied, thereby endangering the life or physical safety of those sources of information by exposing them to possible reprisals for having provided information relating to the criminal activities of those individuals who are the subjects of the investigative files and records; confidential sources and other informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the Federal Emergency Management Agency to carry out its mandate to enforce criminal and related laws. Additionally, providing access to records contained in the above-listed system of records could reveal the identities of undercover law enforcement personnel who compiled information regarding individual's criminal activities, thereby endangering the life or physical safety of those undercover personnel or their families by exposing them to possible reprisals.

(iii) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(ii) of this section, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraph (b)(ii) of this section are equally applicable to this paragraph and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of other law enforcement agencies to make effective use of information provided by the Federal Emergency Management Agency in connection with the investigation, detection and apprehension of violators of the criminal laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators or possible violators would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities, and this could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographic areas or by destroying or concealing evidence which would form the basis for their arrest. In addition, providing violators with accountings of disclosure would alert those individuals to the fact that the Federal Emergency Management Agency has information regarding their criminal activities and could inform those individuals of the general nature of that information; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension for violations of criminal and related laws.

(v) 5 U.S.C. 552a(c)(4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him/her, and since the above-listed system of records is proposed to be exempt from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (b)(iii) of this section, the Federal Emergency Management Agency believes that this provision should not be applicable to the above system of records.

(vi) 5 U.S.C. 552a(e)(4)(I) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The categories of sources of this system of records have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vii) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Federal Emergency Management Agency, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of an investigation, and in many cases, information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law discovered during a criminal investigation fall within the investigative jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMA investigation. The Federal Emergency Management Agency, therefore, believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(1).

(viii) 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of the Federal Emergency Management Agency to conduct investigations and to identify or detect violators of criminal or related laws for the following reasons:

(A) Most information collected about an individual under criminal investigations is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the subject of the investigation as a source for information regarding his/her criminal activities, (B) an attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, (C) in certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty, and (D) during criminal investigations it is often a matter of sound investigative procedures to obtain information from a variety of sources in order to verify information already obtained.

(ix) 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, either on the form which the agency uses to collect the information or on a separate form which can be retained by the individual, with the following information: The authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision in order to avoid adverse effects on its ability to identify or detect violators of criminal or related laws. In many cases, information is obtained by confidential sources, other informers or undercover law enforcement officers under circumstances where it is necessary that the true purpose of their actions be kept secret so as to avoid alerting the subject of the investigation or his/her associates that a criminal investigation is in process. Further, if it became known that the undercover officer was assisting in a criminal investigation, that officer's life or physical safety could be endangered through reprisal, and, under such circumstances it may not be possible to continue to utilize that officer in the investigation. In many cases, individuals, for personal reasons, would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer who they believe is not involved in law enforcement activities. In addition, providing a source of information with written evidence that he was a source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the subject of the investigation. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation would result in a finding that the subject was not involved in any criminal activity.

(x) 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the above-listed system of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously restrict the necessary flow of information from the Federal Emergency Management Agency to other law enforcement agencies when a FEMA investigation revealed information pertaining to a violation of law which was under investigative jurisdiction of another agency. In collecting information during the course of a criminal investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear to be inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting on results obtained during criminal investigations. The Federal Emergency Management Agency believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(5).

(xi) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable effort to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The Federal Emergency Management Agency believes that the above-listed system of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence on an on-going investigation where there is a need to keep the existence of the investigation secret.

(xii) 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency's refusal to amend a record or to make a review of a request for amendment; for an agency's refusal to grant access to a record; for an agency's failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual; and for an agency's failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision to the extent that the civil remedies provided therein may relate to provisions of 5 U.S.C. 552a from which the above-listed system of records is proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraphs (b)(2)(i) through (xi) of this section are proposed to be inapplicable to the above-listed systems of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would adversely affect its ability to conduct criminal investigations by exposing to civil court action every stage of the criminal investigative process in which information is compiled or used in order to identify, detect, or otherwise investigate persons suspected or known to be engaged in criminal conduct.

(xiii) Individuals may not have access to another agency's records, which are contained in files maintained by the Federal Emergency Management Agency, when that other agency's regulations provide that such records are subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, FEMA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

[45 FR 64580, Sept. 30, 1980]

§ 6.87 Specific exemptions.

(a) *Exempt under 5 U.S.C. 552a(k)(1).* Records in any of the systems of records maintained by the Federal Emergency Management Agency which contain any information properly classified under Executive Order 12065 or subsequent Executive Orders and which are required by the Executive Order to be kept secret in the national defense or foreign policy are exempt from requirements of (d) and (f) of the Act. This exemption which conceivably could be applicable to individual records in any of the systems of records for which FEMA has published a system's notice is necessary because certain records in a system not specifically designated could contain isolated items of information which have been properly classified and which cannot be disclosed.

(b) *Exempt under 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).* The Federal Emergency Management Agency will not deny individuals access to information which has been used to deny them a right, privilege, or benefit to which they would otherwise be entitled.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(2), shall be exempt from the provision of 5 U.S.C. 552a listed in paragraph (b) of this section.

General Investigative Files (FEMA/IG-2)—Limited Access
Equal Employment Opportunity complaints of discrimination files (FEMA/EO-1)—Limited Access
Claims (litigation), (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance), (FEMA-GC-2)—Limited Access
Operating Personnel Folder Files (FEMA-SUP-1)—Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed systems of records would impair the ability of FEMA to successfully complete investigations and inquiries of suspected violators of civil and criminal laws and regulations under its jurisdiction. In many cases investigations and inquiries into violations of civil and criminal laws and regulations involve complex and continuing patterns of behavior. Individuals, if informed, that they have been identified as suspected violators of civil or criminal laws and regulations, would have an opportunity to take measures to prevent detection of illegal action so as to avoid prosecution or the imposition of civil sanctions. They would also be able to learn the nature and location of the investigation or inquiry, the type of surveillance being utilized, and they would be able to transmit this knowledge to co-conspirators. Finally, violators might be given the opportunity to destroy evidence needed to prove the violation under investigation or inquiry.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed systems of records would impair its ability to complete or continue civil or criminal investigations and inquiries and to detect violators of civil or criminal laws. Permitting access to records contained in the above-listed systems of records would provide violators with significant information concerning the nature of the civil or criminal investigation or inquiry. Knowledge of the facts developed during an investigation or inquiry would enable violators of criminal and civil laws and regulations to learn the extent to which the investigation or inquiry has progressed, and this could provide them with an opportunity to destroy evidence that would form the basis for prosecution or the imposition of civil sanctions. In addition, knowledge gained through access to investigatory material could alert a violator to the need to temporarily postpone commission of the violation or to change the intended point where the violation is to be committed so as to avoid detection or apprehension. Further, access to investigatory material would disclose investigative techniques and procedures which, if known, could enable violators to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing investigators' established and effective investigative tools and procedures. In addition, investigatory material may contain the identity of a confidential source of information or other informer who would not want his/her identity to be disclosed for reasons of personal privacy or for fear of reprisal at the hands of the individual about whom he/she supplied information. In some cases mere disclosure of the information provided by an informer would reveal the identity of the informer either through the process of elimination or by virtue of the nature of the information supplied. If informers cannot be assured that their identities (as sources for information) will remain confidential, they would be very reluctant in the future to provide information pertaining to violations of criminal and civil laws and regulations, and this would seriously compromise the ability of the Federal Emergency Management Agency to carry out its mission. Further, application of 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) to the above-listed systems of records would make available attorney's work product and other documents which contain evaluations, recommendations, and discussions of ongoing civil and criminal legal proceedings; the availability of such documents could have a chilling effect on the free flow of information and ideas within the Federal Emergency Management Agency which is vital to the agency's predecisional deliberative process, could seriously prejudice the agency's or the Government's position in a civil or criminal litigation, and could result in the disclosure of investigatory material which should not be disclosed for the reasons stated above. It is the belief of the Federal Emergency Management Agency that, in both civil actions and criminal prosecutions, due process will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records and related materials which are to be used in legal proceedings.

(iii) 5 U.S.C. 552a (d)(2), (3) and (4), (e)(4)(H) and (f)(4) which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(ii) of this section, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraphs (b)(i) of this section are equally applicable to this paragraph, and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed systems of records would impair the ability of the Federal Emergency Management Agency and other law enforcement agencies to conduct investigations and inquiries into civil and criminal violations under their respective jurisdictions. Making accountings available to violators would alert those individuals to the fact that the Federal Emergency Management Agency or another law enforcement authority is conducting an investigation or inquiry into their activities, and such accountings could reveal the geographic location of the investigation or inquiry, the nature and purpose of the investigation or inquiry and the nature of the information disclosed, and the date on which that investigation or inquiry was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, transferring their activities to other locations or destroying or concealing evidence which would form the basis for prosecution or the imposition of civil sanctions.

(v) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Federal Emergency Management Agency there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation or inquiry, and in many cases information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation or inquiry, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law uncovered during a Federal Emergency Management Agency inquiry fall within the civil or criminal jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMAs civil or criminal investigation or inquiry. The Federal Emergency Management Agency therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

[45 FR 64580, Sept. 30, 1980]

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

Sec.

7.1 Purpose.
7.2 Definitions.
7.3 Application of this regulation.
7.4 Further application of this regulation.
7.5 Specific discriminatory actions prohibited.
7.6 Life, health, and safety.
7.7 Assurances required.
7.8 Elementary and secondary schools.
7.9 Assurances from institutions.
7.10 Compliance information.
7.11 Conduct of investigations.
7.12 Procedure for effecting compliance.
7.13 Hearings.
7.14 Decisions and notices.
7.15 Judicial review.
7.16 Effect on other regulations; forms and instructions.

AUTHORITY: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000 d-1; 42 U.S.C. 1855-1885g; 50 U.S.C. 404.

SOURCE: FEMA Reg. 5, 30 FR 321, Jan. 9, 1965, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980.

§ 7.1 Purpose.

The purpose of this regulation is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Federal Emergency Management Agency.

§ 7.2 Definitions.

As used in this regulation:

(a) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Director of the Federal Emergency Management Agency or other official of the agency who by law or by delegation has the principal responsibility within the agency for the administration of the law extending such assistance.

(b) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structure, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible agency official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

§ 7.3 Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by those receiving assistance under the "Federal Disaster Assistance" program (Pub. L. 81-875; 42 U.S.C. 1855-1855g), or under the "Interim Emergency Management of Resources" program (section 103 of the National Security Act of 1947; Pub. L. 80-253, as amended; 50 U.S.C. 404).

§ 7.4 Further application of this regulation.

Other programs under statutes hereafter enacted may be covered by this regulation after notice is published in the FEDERAL REGISTER. This regulation applies to any program for which Federal financial assistance is authorized under a law administered by the Federal Emergency Management Agency. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under such program, of any employer, employment agency, or labor organization.

§ 7.5 Specific discriminatory actions prohibited.

(a) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny any individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in section 4.

§ 7.6 Life, health, and safety.

Notwithstanding the provisions of section 5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with section 3, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health or safety.

§ 7.7 Assurances required.

Every application for Federal financial assistance to carry out a program to which this regulation applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this regulation. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantee, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

§ 7.8 Elementary and secondary schools.

The requirements of section 7 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the United States Commissioner of Education determines is adequate to accomplish the purpose of the Act and this regulation, and provides reasonable assurance that it will carry out such plans; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this regulation. In any case to which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

§ 7.9 Assurances from institutions.

(a) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by section 7 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Director of the Federal Emergency Management Agency that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 7.10 Compliance information.

(a) *Cooperation and assistance.* The responsible official in the Federal Emergency Management Agency shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this regulation and shall provide assistance and guidance to recipients to help them comply voluntarily with this regulation.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this regulation. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this regulation.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this regulation. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this regulation.

§ 7.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this regulation.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this regulation may by himself or by a representative file with the National Headquarters or any Regional Office of the Federal Emergency Management Agency a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this regulation. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this regulation occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this regulation.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this regulation, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in section 12.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this regulation, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this regulation. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 7.12 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with section 7.* If an applicant fails or refuses to furnish an assurance required under section 7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application thereof approved prior to the effective date of this regulation.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this regulation, (3) the action has been approved by the Director of the Federal Emergency Management Agency pursuant to section 14, and (4) the expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Director of the Federal Emergency Management Agency, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 7.13 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by section 12(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and section 12(c) of this regulation and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the National Headquarters of the Federal Emergency Management Agency in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this regulation, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director of the Federal Emergency Management Agency may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this regulation. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with section 14.

§ 7.14 Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever he conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of his final decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to section 13(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this regulation with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible agency official (other than the Director of the agency) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the Director of the Federal Emergency Management Agency who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation, unless and until it corrects its noncompliance and satisfies the Director of the Federal Emergency Management Agency that it will fully comply with this regulation.

§ 7.15 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 7.16 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Federal Emergency Management Agency which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede Executive Orders 10925 and 11114 (including future amendments thereof) and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this regulation as applied to programs to which this regulation applies and for which he is responsible.

(c) *Supervision and coordination.* The Director of the Federal Emergency Management Agency may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this regulation (other than responsibility for final decision as provided in section 14), including the achievement of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of title VI and this regulation to similar programs and in similar situations.

PART 8—EQUAL EMPLOYMENT OPPORTUNITY [RESERVED]

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Sec.
9.1 Purpose of part.
9.2 Policy.
9.3 Authority.
9.4 Definitions.
9.5 Scope.
9.6 Decision-making process.
9.7 Determination of proposed action's location.
9.8 Public notice requirements.
9.9 Analysis and reevaluation of practicable alternatives.
9.10 Identify impacts of proposed actions.
9.11 Mitigation.
9.12 Final public notice.
9.13 Particular types of temporary housing.
9.14 Disposal of agency property.
9.15 Planning programs affecting land use.
9.16 Guidance for applicants.
9.17 Instructions to applicants.
9.18 Responsibilities.
9 Delegation of authority.
ENDIX A—DECISION-MAKING PROCESS FOR E.O. 11988

HORITY: Executive Order 11988, May 24, 1977; Executive Order 11990, May 24, 1977; Reorganization Plan No. 3 of 1978 (43 FR 41943); Executive Order 12127, April 1, 1979; Executive Order 12148, July 20, 1979.

SOURCE: 45 FR 59526, Sept. 9, 1980, unless otherwise noted.

§ 9.1 Purpose of part.

This regulation sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

§ 9.2 Policy.

(a) FEMA shall take no action unless and until the requirements of this regulation are complied with.

(b) It is the policy of the Agency to provide leadership in floodplain management and the protection of wetlands. Further, the Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing NEPA. The Agency shall take action to:

(1) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(2) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(3) Reduce the risk of flood loss;

(4) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(5) Minimize the impact of floods on human health, safety and welfare;

(6) Minimize the destruction, loss or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

§ 9.3 Authority.

The authority for these regulations is (a) Executive Order 11988, May 24, 1977, which replaced Executive Order 11296, August 10, 1966, (b) Executive Order 11990, May 24, 1977, (c) Reorganization Plan No. 3 of 1978 (43 FR 41943); and (d) Executive Order 12127, April 1, 1979 (44 FR 1936). E.O. 11988 was issued in furtherance of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-488); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 92-234); and the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91-190). Section 2(d) of Executive Order 11988 requires issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions. E.O. 11990 was issued in furtherance of NEPA, and at section 6 required issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions.

§ 9.4 Definitions.

The following definitions shall apply throughout this regulation.

Action means any action or activity including: (a) Acquiring, managing and disposing of federal lands and facilities; (b) providing federally undertaken, financed or assisted construction and improvements; and (c) conducting federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating and licensing activities.

Actions Affecting or Affected by Floodplains or Wetlands means actions which have the potential to result in the long- or short-term impacts associated with (a) the occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or (b) the destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

Agency means the Federal Emergency Management Agency (FEMA).

Agency Assistance means grants for projects or planning activities, loans, and all other forms of financial or technical assistance provided by the Agency.

Associate Director means the head of any Office or Administration of the Federal Emergency Management

Agency, who has programmatic responsibility for a particular action.

Base Flood means the flood which has a one percent chance of being equalled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

Base Floodplain means the 100-year floodplain (one percent chance floodplain).

Coastal High Hazard Area means the areas subject to high velocity waters including but not limited to hurricane wave wash or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1-30.

Critical Action means an action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., critical action floodplain. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(a) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) Such as generating plants, and other principal points of utility lines.

Direct Impacts means changes in floodplain or wetland values and functions and changes in the risk to lives and property caused or induced by an action or related activity. Impacts are caused whenever these natural values and functions are affected as a direct result of an action. An action which would result in the discharge of polluted storm waters into a floodplain or wetland, for example, would directly affect their natural values and functions. Construction-related activities, such as dredging and filling operations within the floodplain or a wetland would be another example of impacts caused by an action.

Director means the Director of the Federal Emergency Management Agency (FEMA).

Emergency Actions means emergency work essential to save lives and protect property and public health and safety performed under sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146). See 44 CFR Part 205, Subpart E.

Enhance means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

Facility means any man-made or man-placed item other than a structure.

FEMA means the Federal Emergency Management Agency.

FIA means the Federal Insurance Administration.

Five Hundred Year Floodplain (the 500-year floodplain or 0.2 percent change floodplain) means that area, including the base floodplain, which is subject to inundation from a flood having a 0.2 percent chance of being equalled or exceeded in any given year.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Fringe means that portion of the floodplain outside of the floodway (often referred to as "floodway fringe").

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. Wherever in this regulation the term "floodplain" is used, if a critical action is involved, "floodplain" shall mean the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). "Floodplain" does not include areas subject only to mudflow until FIA adopts maps identifying "M" Zones.

Floodproofing means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce effects of water entry.

Floodway means that portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

Flood Hazard Boundary Map (FHBM) means an offical map of a community, issued by the Director, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated as Zone A, M, or E.

Flood Insurance Rate Map (FIRM) means an official map of a community on which the Director has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Functionally Dependent Use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, (e.g., bridges, and piers).

Indirect Impacts means an indirect result of an action whenever the action induces or makes possible related activities which effect the natural values and functions of floodplains or wetlands or the risk to lives and property. Such impacts occur whenever these values and functions are potentially affected, either in the short- or long-term, as a result of undertaking an action.

Minimize means to reduce to the smallest amount or degree possible.

Mitigation means all steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

Natural Values of Floodplains and Wetlands means the qualities of or functions served by floodplains and wetlands which include but are not limited to: (a) Water resource values (natural moderation of floods, water quality maintenance, groundwater recharge); (b) living resource values (fish, wildlife, plant resources and habitats); (c) cultural resource values (open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation); and (d) cultivated resource values (agriculture, aquaculture, forestry).

New Construction means the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

New Construction in Wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective dates of the Orders, May 24, 1977.

Orders means Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

Practicable means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of all pertinent factors, such as environment, cost and technology.

Preserve means to prevent alterations to natural conditions and to maintain the values and functions which operate the floodplains or wetlands in their natural states.

Regional Director means the Regional Director of the Federal Emergency Management Agency for the Region in which FEMA is acting or the Disaster Recovery Manager when one is designated.

Regulatory Floodway means the area regulated by federal, State or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program).

Restore means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

Structures means walled or roofed buildings, including mobile homes and gas or liquid storage tanks.

Substantial Improvement means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) (a) before the repair or improvement is started, or (b) if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

Support means to encourage, allow, serve or otherwise facilitate floodplain or wetland development. Direct support results from actions within a floodplain or wetland, and indirect support results from actions outside of floodplains or wetlands.

Wetlands means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows and other similar areas. This definition includes those wetlands areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service in the publication entitled *Classification of Wetlands and Deep Water Habitats of the United States* (Cowardin, et al., 1977).

§ 9.5 Scope.

(a) *Applicability.* (1) These regulations apply to all Agency actions which have the potential to affect floodplains or wetlands or their occupants, or which are subject to potential harm by location in floodplains or wetlands.

(2) The basic test of the potential of an action to affect floodplains or wetlands is the action's potential (both by itself and when viewed cumulatively with other proposed actions) to result in the long- or short-term adverse impacts associated with:

(i) The occupancy or modification of floodplains, and the direct and indirect support of floodplain development; or

(ii) The destruction or modification of wetlands and the direct or indirect support of new construction in wetlands.

(3) This regulation applies to actions that were, on the effective date of the Orders (May 24, 1977), ongoing, in the planning and/or development stages, or undergoing implementation, and are incomplete as of the effective date of these regulations. The regulation also applies to proposed (new) actions. The Agency shall:

(i) Determine the applicable provisions of the Orders by analyzing whether the action in question has progressed beyond critical stages in the floodplain management and wetlands protection decision-making process, as set out below in § 9.6. This determination need only be made at the time that followup actions are being taken to complete or implement the action in question; and

(ii) Apply the provisions of the Orders and of this regulation to all such actions to the fullest extent practicable.

(b) *Limited exemption of ongoing actions involving wetlands located outside the floodplains.* (1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found in Executive Order 11988, Floodplain Management. Therefore, this exemption applies only to actions affecting wetlands which are located outside the floodplains, and which have no potential to result in harm to or within floodplains or to support floodplain development.

(2) The following proposed actions that impact wetlands located outside of floodplains are exempt from this regulation:

(i) Agency-assisted or permitted projects which were under construction before May 24, 1977; and (ii) projects for which the Agency has proposed a draft of a final environmental impact statement (EIS) which adequately analyzes the action and which was filed before October 1, 1977. Proposed actions that impact wetlands outside of floodplains are not exempt if the EIS:

(A) Only generally covers the proposed action;

(B) Is devoted largely to related activities; or

(C) Treats the project area or program without an adequate and specific analysis of the floodplain and wetland implications of the proposed action.

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this regulation are not applicable to the actions enumerated below except that the Regional Directors shall comply with the spirit of the Orders to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (See § 9.6) except as indicated at paragraphs (d) and (f) of this section. The provisions of these regulations do not apply to the following (all references are to the Disaster Relief Act of 1974, Pub. L. 93-288, as amended):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 305 and 306;

(2) Emergency Support Teams (sec. 304);

(3) Unemployment Assistance (sec. 407);

(4) Emergency Communications (sec. 415);

(5) Emergency Public Transportation (sec. 416);

(6) Fire Suppression Assistance (sec. 417);

(7) Community Disaster Loans (sec. 414), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(8) The following Individual and Family Grant Program (sec. 408) actions:

(i) Housing needs or expenses, except for restoring, repairing or building private bridges, purchase of mobile homes and provision of structures as minimum protective measures;

(ii) Personal property needs or expenses;

(iii) Transportation expenses;

(iv) Medical/dental expenses;

(v) Funeral expenses;

(vi) Limited home repairs;

(vii) Flood insurance premium;

(viii) Cost estimates;

(ix) Food expenses; and

(x) Temporary rental accommodations.

(9) Mortgage and rental assistance under sec. 404(b);

(10) Debris removal (sec. 403), except those grants involving non-emergency disposal of debris within a floodplain or wetland;

(11) Minimal home repairs (sec. 404(c));

(12) Repairs, under section 402, of less than $5,000 to damaged structures or facilities except for:

(i) Actions in a floodway or coastal high hazard area; and

(ii) New or substantially improved structures or facilities.

(d) For each action enumerated below, the Regional Director shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.8, 9.10 and 9.11, see § 9.6). Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands, and of the site on the proposed action, alternative actions to the proposed action, if any, and the "no action" alternative shall be considered. The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below, except as indicated in paragraphs (c) and (f) of this section, the full 8-step process applies (see § 9.6). The references are to the Disaster Relief Act of 1974, Pub. L. 93-288, as amended.

(1) Actions performed under the Individual and Family Grant Program (sec. 408) for restoring or repairing a private bridge, except where two or more individuals or families are authorized to pool their grants for this purpose.

(2) Small project grants (sec. 419), except to the extent that federal funding involved is used for construction of new facilities or structures.

(3) Replacement of building contents, materials and equipment. (secs. 402 and 419).

(4) Repairs under section 402 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50% of the estimated reconstruction cost of the entire facility or structure, or is more than $100,000, or

(ii) The action is located in a floodway or coastal high hazard area, or

(iii) The facility or structure is one which has previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid, or

(iv) The action is a critical action.

(e) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§ 9.6), the Director may find that a specific category of actions either: offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in § 9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in § 9.5(d). This finding will be made in consultation with the Water Resources Council, the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the FEDERAL REGISTER, and a 30 day comment period.

(f) *The National Flood Insurance Program (NFIP).* (1) Most of what is done by FIA in administering the National Flood Insurance Program is performed on a program-wide basis. For all regulations, procedures or other issuances making or amending program policy, FIA shall apply the 8-step decision-making process to that program-wide action. The action to which the 8-step process must be applied is the establishment of programmatic standards or criteria, not the application of programmatic standards or criteria to specific situations. Thus, for example, FIA would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure. The two prime examples of where FIA does take site specific actions which would require individual application of the 8-step process are property acquisition under section 1362 of the National Flood Insurance Act of 1968, as amended, and the issuance of an exception to a community under 44 CFR 60.6(b). (See also § 9.9(e)(6) and § 9.11(e).)

(2) The provisions set forth in this regulation are not applicable to the actions enumerated below except that the Federal Insurance Administrator shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contactors to assist in the implementation of the National Flood Insurance Program;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

§ 9.6 Decision-making process.

(a) *Purpose.* The purpose of this section is to set out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. While the decision-making process was initially designed to address the floodplain Order's requirements, the process will also satisfy the wetlands Order's provisions due to the close similarity of the two directives. The numbering of Steps 1 through 8 does not firmly require that the steps be followed sequentially. As information is gathered throughout the decision-making process and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) Except as otherwise provided in § 9.5 (c), (d) and (f), when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

Step 1. Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (500-year floodplain for critical actions); and whether it has the potential to affect or be affected by a floodplain or wetland (see § 9.7);

Step 2. Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see § 9.8);

Step 3. Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions and the "no action" option) (see § 9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

Step 4. Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see § 9.10);

Step 5. Minimize the potential adverse impacts and support to or within floodplains and wetlands to be identified under Step 4, restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands (see § 9.11);

Step 6. Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain and wetland values and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA shall not act in a floodplain or wetland unless it is the only practicable location (see § 9.9);

Step 7. Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see § 9.12); and

Step 8. Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

§ 9.7 Determination of proposed action's location.

(a) The purpose of this section is to establish Agency procedures for determining whether any action as proposed is located in or affects (1) the base floodplain (the Agency shall substitute the 500-year floodplain for the base floodplain where the action being proposed involves a critical action), or (2) a wetland.

(b) *Information needed.* The Agency shall obtain enough information so that it can fulfill the requirements of the Orders to (1) avoid floodplain and wetland locations unless they are the only practicable alternatives; and (2) minimize harm to and within floodplains and wetlands. In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. In the absence of a finding to the contrary, FEMA may assume that a proposed action involving a facility or structure that has been flooded is in the floodplain. Information about the 100-year and 500-year floods and location of floodways and coastal high hazard areas may also be needed to comply with these regulations, especially § 9.11. The following additional flooding characteristics shall be identified by the Regional Director as appropriate:

(i) Velocity of floodwater;

(ii) Rate of rise of floodwater;

(iii) Duration of flooding;

(iv) Available warning and evacuation time and routes;

(v) Special problems:

(A) Levees;

(B) Erosion;

(C) Subsidence;

(D) Sink holes;

(E) Ice jams;

(F) Debris load;

(G) Pollutants;

(H) Wave heights;

(I) Groundwater flooding;

(J) Mudflow.

(c) *Floodplain determination.* (1) In the search for flood hazard information, FEMA shall follow the sequence below:

(i) The Regional Director shall consult the FIA Flood Insurance Rate Map (FIRM) the Flood Hazard Floodway Boundary Map (FHFBM) and the Flood Insurance Study (FIS).

(ii) If a detailed map (FIRM or FHFBM) is not available, the Regional Director shall consult an FIA Flood Hazard Boundary Map (FHBM). If data on flood elevations, floodways, or coastal high hazard areas are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, the Regional Director shall seek the necessary detailed information and assistance from the sources listed below.

SOURCES OF MAPS AND TECHNICAL INFORMATION

Department of Agriculture: Soil Conservation Service
Department of the Army: Corps of Engineers
Department of Commerce: National Oceanic and Atmospheric Administration
Federal Insurance Administration
FEMA Regional Offices/Division of Insurance and Hazard Mitigation
Department of the Interior:
  Geological Survey
  Bureau of Land Management
  Bureau of Reclamation
Tennessee Valley Authority
Delaware River Basin Commission
Susquehanna River Basin Commission
States

(iii) If the sources listed do not have or know of the information necessary to comply with the Orders' requirements, the Regional Director shall seek the services of a federal or other engineer experienced in this type of work.

(2) If a decision involves an area or location within extensive federal or state holdings or a headwater area, and an FIS, FIRM, FHFBM, or FHBM is not available, the Regional Director shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in this section. If none of these sources has information or can provide assistance, the services of an experienced federal or other engineer shall be sought as described above.

(d) *Wetland determination.* The following sequence shall be followed by the Agency in making the wetland determination.

(1) The Agency shall consult with the U.S. Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action.

(2) If the FWS does not have adequate information upon which to base the determination, the Agency shall consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others.

(3) If state or other sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

(4) If an action is in a wetland but not in a floodplain, and the action is new construction, the provisions of this regulation shall apply. Even if the

action is not in a wetland, the Regional Director shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See § 9.6.) In such a case the wetland will be considered as one of the natural and beneficial values of floodplain.

§ 9.8 Public notice requirements.

(a) *Purpose.* The purpose of this section is to establish the initial notice procedures to be followed when proposing any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see § 9.12); and

(2) Rely on its environmental assessment and OMB Circular A-95 processes, to the extent possible, as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS is adequate to constitute the early public notice, if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency shall use the FEDERAL REGISTER as the minimum means for notice, and shall provide notice by mail to national organizations reasonably expected to be interested in the action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall base its determination of appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (c)(6) and (c)(7) of this section) on factors which include, but are not limited to:

(i) Scale of the action;

(ii) Potential for controversy;

(iii) Degree of public need;

(iv) Number of affected agencies and individuals; and

(v) Its anticipated potential impact.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall entail as appropriate:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Information required in the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Holding a public hearing.

(5) The notice shall include:

(i) A description of the action, its purpose and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;

(ii) Based on the factors in paragraph (c)(3) of this section, a map of the area or other indentification of the floodplain and/or wetland areas which is of adequate scale and detail so that the location is descernible; instead of publication of such map, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information;

(iii) Based on the factors in paragraph (c)(3) of this section, a description of the type, extent and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identification of the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) *Purpose.* (1) The purpose of this section is to expand upon the directives set out in § 9.6, of this part, in order to clarify and emphasize the Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see § 9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) *No action.* The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (topography, habitat, hazards, etc.);

(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.);

(3) Economic aspects (costs of space, construction, services, and relocation); and

(4) Legal constraints (deeds, leases, etc.).

(d) *Action following the analysis of practicable alternatives.* (1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives.* Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§ 9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirement of E.O. 11988 to:

(i) Avoid direct or indirect support of floodplain development;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve floodplain values.

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements of E.O. 11990 to:

(i) Avoid the destruction or modification of the wetlands;

(ii) Avoid direct or indirect support of new construction in wetlands;

(iii) Minimize the destruction, loss or degradation of wetlands; and

(iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section, the great weight intended by the Orders.

(5) Choose the "no action" alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e) (2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the "no action" alternative shall be selected.

(6) In any case in which the Regional Director has selected the "no action" option, FIA may not provide a new or renewed contract of flood insurance for that structure.

NOTE: At 45 FR 79070, Nov. 28, 1980, § 9.9(e)(6) was temporarily suspended until further notice.

§ 9.10 Identify impacts of proposed actions.

(a) *Purpose.* The purpose of this section is to ensure that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Such identification of impacts shall be to the extent necessary to comply with the requirements of the Orders to avoid floodplain and wetland locations unless they are the only practicable alternatives and to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands. Regional Offices of the U.S. Fish and Wildlife Service may be contacted to aid in the identification and evaluation of potential impacts of the proposed action on natural and beneficial floodplain and wetland values.

(d) In the review of a proposed or alternative action, the Regional Director shall specifically consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include for example, the factors listed in § 9.7(b)(2);

(2) *Natural values-related factors.* These include, for example, the following: Water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archeological and historic sites, and open space recreation and green belts); and agricultural, aquacultural and forestry resource values.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, for example, the following: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

§ 9.11 Mitigation.

(a) *Purpose.* The purpose of this section is to expand upon the directives set out in § 9.6, above, and to set out the mitigative actions required if the preliminary determination is made to carry out an action that affects or is in a floodplain or wetland.

(b) *General provisions.* (1) The Agency shall design or modify its actions so as to minimize harm to or within the floodplain;

(2) The Agency shall minimize the destruction, loss or degradation of wetlands;

(3) The Agency shall restore and preserve natural and beneficial floodplain values; and

(4) The Agency shall preserve and enhance natural and beneficial wetland values.

(c) *Minimization provisions.* The Agency shall minimize:

(1) Potential harm to lives and the investment at risk from the base flood, or, in the case of critical actions, from the 500-year flood;

(2) Potential adverse impacts the action may have on others; and

(3) Potential adverse impact the action may have on floodplain and wetland values.

(d) *Minimization standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section: Except as provided in § 9.5(c), and (d), any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (see § 9.6) including the general requirement to minimize harm to and within floodplains:

(1) There shall be no new construction or substantial improvement in a floodway, and no new construction in a coastal high hazard area, except for:

(i) A functionally dependent use; or

(ii) A structure or facility which facilitates an open space use.

(2) For a structure which is a functionally dependent use, or which facilitates an open space use, the following applies. There shall be no construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level (the 500-year flood level for critical actions) (including wave height). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash. The Regional Director shall be responsible for determining the base flood level, including the wave height, in all cases. Where there is a FIRM in effect, it shall be the basis of the Regional Director's determination. If the FIRM does not reflect wave heights, or if there is no FIRM in effect, the Regional Director is responsible for delineating the base flood level, including wave heights.

(3) *Elevation of structures.* (i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the level of the base flood.

(ii) There shall be no new construction or substantial improvement of structures involving a critical action unless the lowest floor of the structure (including the basement) is at or above the level of the 500-year flood.

(iii) If the subject structure is nonresidential, FEMA may, instead of elevating the structure to the 100-year or 500-year level, as appropriate, approve the design of the structure and its attendant utility and sanitary facilities so that below the flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iv) The provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section do not apply to the extent that the Federal Insurance Administration has granted an exception under 44 CFR § 60.6(b) (formerly 24 CFR 1910.6(b)), or the community has granted a variance which the Regional Director determines is consistent with 44 CFR 60.6(a) (formerly 24 CFR 1910.6(a)). In a community which does not have a FIRM in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i), (ii), and (iii) of this section, after compliance with the standards of 44 CFR 60.6(a).

(4) There shall be no encroachments, including fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the base floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraphs (d) (1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

(i) Such site is the only practicable alternative; and

(ii) Harm to and within the floodplain is minimized.

(6) In addition to standards (d)(1) through (d)(5) of this section, no action may be taken if it is inconsistent with the criteria of the National Flood Insurance Program (44 CFR

Part 59 *et seq.*) or any more restrictive federal, State or local floodplain management standards.

(7) New construction and substantial improvement of structures shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill, in all cases in coastal high hazard areas and elsewhere, where practicable.

(8) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(i) Where appropriate, integrate all of its proposed actions in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(ii) Facilitate adequate access and egress to and from the site of the proposed action; and

(iii) Give special consideration to the unique hazard potential in flash flood, rapid-rise or tsunami areas.

(9) In the replacement of building contents, materials and equipment, the Regional Director shall require as appropriate, disaster proofing of the building and/or elimination of such future losses by relocation of those building contents, materials and equipment outside or above the base floodplain or the 500-year floodplain for critical actions.

(e) In the implementation of the National Flood Insurance Program, the Federal Insurance Administrator:

(1) Shall make identification of all coastal high hazard areas a priority;

(2) Beginning October 1, 1981, may only provide flood insurance for new construction or substantial improvements in a coastal high hazard area if:

(i) Wave heights have been designated for the site of the structure either by the Administrator based upon data, generated by FIA or by another source, satisfactory to the Administrator;

(ii) The structure is rated by FIA based on a system which reflects the capacity to withstand the effects of the 100-year frequency flood including, but not limited to, the following factors:

(A) Wave heights;

(B) The ability of the structure to withstand the force of waves.

(3) Shall notify communities with coastal high hazard areas and federally related lenders in such communities, of the provisions of this paragraph. Notice to the lenders may be accomplished by the federal instrumentalities to which the lenders are related.

(4) In any case in which the Regional Director has been, pursuant to § 9.11(d)(1), precluded from providing assistance for a new or substantially improved structure in a floodway, FIA may not provide a new or renewed policy of flood insurance for that structure.

(f) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

[45 FR 59526, Sept. 9, 1980, as amended at 46 FR 24952, May 4, 1981]

NOTE: At 45 FR 79070, Nov. 28, 1980, § 9.11(e)(4) was temporarily suspended until further notice.

§ 9.12 Final public notice.

If the Agency decides to take an action in or affecting a floodplain or wetland, it shall provide the public with a statement of its final decision and shall explain the relevant factors considered by the Agency in making this determination.

(a) For its programs that are subject to OMB Circular A-95 (revised), the Agency shall send the final notice to the State and areawide A-95 clearinghouse for the affected area. In addition, those sent notices under § 9.8 shall also be provided the final notice.

(b) For actions for which an environmental impact statement is being prepared, the FEIS is adequate to constitute final notice in all cases except where:

(1) Significant modifications are made in the FEIS after its initial publication;

(2) Significant modifications are made in the development plan for the proposed action; or

(3) Significant new information becomes available in the interim between issuance of the FEIS and implementation of the proposed action.

If any of these situations develop, the Agency shall prepare a separate final notice that contains the contents of paragraph (e) of this section and shall make it available to those who received the FEIS. A minimum of 15 days shall, without good cause shown, be allowed for comment on the final notice.

(c) For actions for which an environmental assessment was prepared, the Notice of No Significant Impact is adequate to constitute final public notice, if it includes the information required under paragraph (e) of this section.

(d) For all other actions, the finding shall be made in a document separate from those described in paragraphs (a), (b), and (c) of this section. Based on an assessment of the following factors, the requirement for final notice may be met in a cumulative manner:

(1) Scale of the action;

(2) Potential for controversy;

(3) Degree of public need;

(4) Number of affected agencies and individuals;

(5) Its anticipated potential impact; and

(6) Similarity of the actions, i.e., to the extent that they are susceptible of common descriptions and assesssments.

When a damaged structure or facility is already being repaired by the State or local government at the time of the Damage Survey Report, the requirements of Steps 2 and 7 (§§ 9.8 and 9.12) may be met by a single notice. Such notice shall contain all the information required by both sections.

(e) The final notice shall include the following:

(1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland;

(2) A description of all significant facts considered in making this determination;

(3) A list of the alternatives considered;

(4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards;

(5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved;

(6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and

(7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

(f) After providing the final notice, the Agency shall, without good cause shown, wait at least 15 days before carrying out the action.

§ 9.13 Particular types of temporary housing.

(a) The purpose of this section is to set forth the procedures whereby the Agency will provide certain specified types of temporary housing.

(b) Prior to providing the types of temporary housing enumerated in paragraph (c) of this section, the Agency shall comply with the provisions of this section. For all temporary housing not enumerated below, the full 8-step process (see § 9.6) applies.

(c) The following temporary housing actions are subject to the provisions of this section and not the full 8-step process:

(1) Providing housing in existing resources; and

(2) Placing a mobile home or readily fabricated dwelling on a private or commercial site, but not a group site.

(d) The actions set out in paragraph (c) of this section are subject to the following decision-making process:

(1) The temporary housing action shall be evaluated in accordance with

the provisions of § 9.7 to determine if it is in or affects a floodplain or wetland.

(2) No mobile home or readily fabricated dwelling may be placed on a private or commercial site in a floodway or coastal high hazard area.

(3) An individual or family shall not be housed in a floodplain or wetland unless the Regional Director has complied with the provisions of § 9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in §§ 9.9(c) and 9.9(e) (2) through (4):

(i) Speedy provision of temporary housing;

(ii) Potential flood risk to the temporary housing occupant;

(iii) Cost effectiveness;

(iv) Social and neighborhood patterns;

(v) Timely availability of other housing resources; and

(vi) Potential harm to the floodplain or wetland.

(4) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Director has complied with the provisions of § 9.11 to minimize harm to and within floodplains and wetlands. The following provisions shall be substituted for the provisions of § 9.11(d) for mobile homes:

(i) No mobile home or readily fabricated dwelling may be placed on a private or commercial site unless it is elevated to the fullest extent practicable up to the base flood level and adequately anchored.

(ii) No mobile home or readily fabricated dwelling may be placed if such placement is inconsistent with the criteria of the National Flood Insurance Program (44 CFR Part 59 *et seq.*) or any more restrictive federal, State or local floodplain management standard. Such standards may require elevation to the base flood level in the absence of a variance.

(iii) Mobile homes shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing mobile homes for temporary housing in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the mobile home; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(5) FEMA shall comply with Step 2 Early Public Notice (§ 9.8(c)) and Step 7 Final Public Notice (§ 9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(e) FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodways or coastal high hazard areas. FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodplains or wetlands unless there is full compliance with the 8-step process. Given the vulnerability of mobile homes to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on (1) a compelling need of the family or individual to buy a mobile home for permanent housing, and (2) a compelling requirement to locate the unit in a floodplain. Further, FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings in a floodplain unless they are elevated at least to the level of the 100-year flood. The Regional Director shall notify the Associate Director for Disaster Response and Recovery of each instance where a floodplain location has been found to be the only practicable alternative for a mobile home sale.

§ 9.14 Disposal of Agency property.

(a) The purpose of this section is to set forth the procedures whereby the Agency shall dispose of property.

(b) Prior to its disposal by sale, lease or other means of disposal, property proposed to be disposed of by the Agency shall be reviewed according to the decision-making process set out in § 9.6, above, as follows:

(1) The property shall be evaluated in accordance with the provisions of § 9.7 to determine if it affects or is affected by a floodplain or wetland;

(2) The public shall be notified of the proposal and involved in the decision-making process in accordance with the provisions of § 9.8;

(3) Practicable alternatives to disposal shall be evaluated in accordance with the provisions of § 9.9. For disposals, this evaluation shall focus on alternative actions (conveyance for an alternative use that is more consistent with the floodplain management and wetland protection policies set out in § 9.2 than the one proposed, e.g., open space use for park or recreational purposes rather than high intensity uses), and on the "no action" option (retain the property);

(4) Identify the potential impacts and support associated with the disposal of the property in accordance with § 9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with § 9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization through floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with § 9.9. This analysis shall focus on whether it is practicable in light of the findings from §§ 9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves all of the components of the Orders' mitigation responsibility;

(7) To the extent that it would decrease the flood hazard to lives and property, the Agency shall, wherever practicable, dispose of the properties according to the following priorities:

(i) Properties located outside the floodplain;

(ii) Properties located in the flood fringe; and

(iii) Properties located in a floodway, regulatory floodway or coastal high hazard area.

(8) The Agency shall prepare and provide the public with a finding and public explanation in accordance with § 9.12.

(9) The Agency shall ensure that the applicable mitigation requirements are fully implemented in accordance with § 9.11.

(c) At the time of disposal, for all disposed property, the Agency shall reference in the conveyance uses that are restricted under existing Federal, State and local floodplain management and wetland protection standards relating to flood hazards and floodplain and wetland values.

§ 9.15 Planning programs affecting land use.

The Agency shall take floodplain management into account when formulating or evaluating any water and land use plans. No plan may be approved unless it:

(a) Reflects consideration of flood hazards and floodplain management and wetlands protection; and

(b) Prescribes planning procedures to implement the policies and requirements of the Orders and this regulation.

§ 9.16 Guidance for applicants.

(a) The Agency shall encourage and provide adequate guidance to applicants for agency assistance to evaluate the effects of their plans and proposals in or affecting floodplains and wetlands.

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, e.g., program handbooks, contracts, application and agreement forms, etc., and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the

determination of whether to provide the required assistance as set out in § 9.6;

(3) The nature of the Orders' practicability analysis as set out in § 9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in § 9.11;

(5) The nature of the Orders' public notice and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements applicable to applications for the lease or other disposal of Agency owned properties set out in § 9.14.

(c) Guidance to applicants shall be provided where possible, prior to the time of application in order to minimize potential delays in process application due to failure of applicants to recognize and reflect the provisions of the Orders and this regulation.

§ 9.17 Instructions to applicants.

(a) *Purpose.* In accordance with Executive Orders 11988 and 11990, the federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of federal financial and technical assistance. The purpose of this section is to put applicants for Agency assistance on notice concerning both the criteria that it is required to follow under the Orders, and applicants' responsibilities under this regulation.

(b) *Responsibilities of Applicants.* Based upon the guidance provided by the Agency under § 9.16, that guidance included in the U.S. Water Resources Council's *Guidance for Implementing E.O. 11988,* and based upon the provisions of the Orders and this regulation, applicants for Agency assistance shall recognize and reflect in their application:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the requested assistance as set out in § 9.6;

(3) The nature of the Orders' practicability analysis as set out in § 9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in § 9.11;

(5) The nature of the Orders' public and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements for application for the lease or other disposal of Agency-owned properties, as set out in § 9.13.

(c) *Provision of supporting information.* Applicants for Agency assistance may be called upon to provide supporting information relative to the various responsibilities set out in paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applications.* Applications for Agency assistance shall be reviewed for the recognition and reflection of the provisions of this regulation in addition to the Agency's existing approval criteria.

§ 9.18 Responsibilities.

(a) *Regional Directors' responsibilities.* Regional Directors shall, for all actions falling within their respective jurisdictions:

(1) Implement the requirements of the Orders and this regulation. Anywhere in §§ 9.2, 9.6 through 9.13, and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Director.

(2) Consult with the General Counsel regarding any question of interpretation concerning this regulation or the Orders.

(b) *Associate Directors' responsibilities.* Associate Directors/Administrators shall ensure that the offices/administrations under their jurisdiction:

(1) Implement the requirements of the Orders and this regulation. When a decision of a Regional Director relating to disaster assistance is appealed, the Associate Director for Disaster Response and Recovery may make determinations under these regulations on behalf of the Agency.

(2) Identify within ninety (90) days of the effective date of this regulation:

(i) The modifications that are necessary to make their existing floodplain management and wetlands protection procedures adequate to meet the directives of the Orders;

(ii) Which of these modifications should be made a part of this regulation;

(iii) Which of these modifications are to be included in program regulations other than this one; and

(iv) The steps being taken to prepare and implement these modifications.

(3) Are in full compliance with the Orders' provisions through the modification of their processes in accordance with (1) and (2), above.

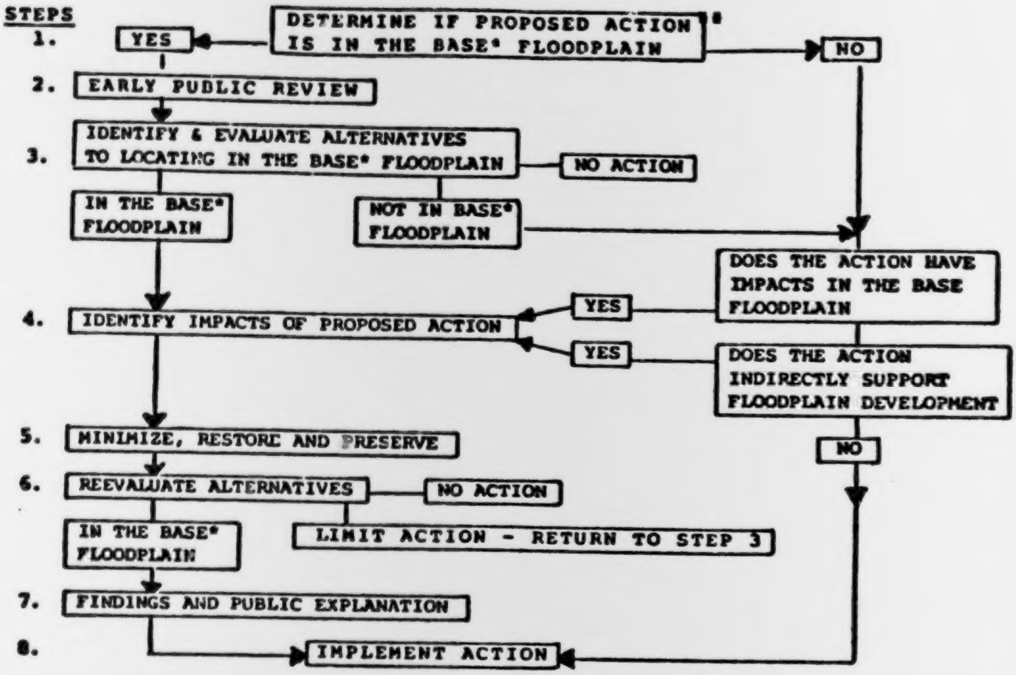
(4) Prepare and submit to the Office of General Counsel reports to the Office of Management and Budget in accordance with section 2(b) of E.O. 11988 and section 3 of E.O. 11990. If a proposed action is to be located in a floodplain or wetland, any requests to the Office of Management and Budget for new authorizations or appropriations shall be accompanied by a report indicating whether the proposed action is in accord with the Orders and these regulations.

§ 9.19 Delegation of authority.

The Federal Insurance Administrator is authorized to exercise the power and authority of the Director, Federal Emergency Management Agency, with respect to the consultation function under Section 2(d) of Executive Order 11988 entitled "Floodplain Management," as amended by Section 5-207 of Executive Order 12148 entitled "Federal Emergency Management Agency." This delegation revokes and supersedes all prior delegations regarding authority under Section 2(d) of Executive Order 11988.

APPENDIX A

DECISION-MAKING PROCESS FOR E.O. 11988


STEPS
1.
YES
DETERMINE IF PROPOSED ACTION IS IN THE BASE* FLOODPLAIN**
NO
2.
EARLY PUBLIC REVIEW
3.
IDENTIFY & EVALUATE ALTERNATIVES TO LOCATING IN THE BASE* FLOODPLAIN
NO ACTION
IN THE BASE* FLOODPLAIN
NOT IN BASE* FLOODPLAIN
DOES THE ACTION HAVE IMPACTS IN THE BASE FLOODPLAIN
YES
4.
IDENTIFY IMPACTS OF PROPOSED ACTION
YES
DOES THE ACTION INDIRECTLY SUPPORT FLOODPLAIN DEVELOPMENT
5.
MINIMIZE, RESTORE AND PRESERVE
NO
6.
REEVALUATE ALTERNATIVES
NO ACTION
IN THE BASE* FLOODPLAIN
LIMIT ACTION - RETURN TO STEP 3
7.
FINDINGS AND PUBLIC EXPLANATION
8.
IMPLEMENT ACTION

* FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE" AND FOR WETLANDS DELETE "BASE FLOODPLAIN" AND SUBSTITUTE " WETLANDS".

** FOR WETLANDS "ACTION" INCLUDES "NEW CONSTRUCTION" ONLY.

PART 10—ENVIRONMENTAL CONSIDERATIONS

Subpart A—General

Sec.
10.1 Background and Purpose.
10.2 Applicability and Scope.
10.3 Definitions.
10.4 Policy.

Subpart B—Agency Implementing Procedures

10.5 Responsibilities.
10.6 Making or Amending Policy.
10.7 Planning.
10.8 Determination of Requirement for Environmental Review.
10.9 Preparation of Environmental Assessments.
10.10 Preparation of Environmental Impact Statements.
10.11 Environmental Information.
10.12 Pre-Implementation Actions.
10.13 Emergencies.
10.14 Flood Plains and Wetlands.

AUTHORITY: 42 U.S.C. 4321 *et seq.*, Executive Order 11514, as amended by E.O. 11991; Reorganization Plan No. 3 of 1978 (43 FR 41943), and Executive Order 12127 April 1, 1979 (44 FR 1936).

SOURCE: 45 FR 41142, June 18, 1980, unless otherwise noted.

§ 10.1 Background and purpose.

(a) This part implements the Council on Environmental Quality (CEQ) regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) and provides policy and procedures to enable Federal Emergency Management Agency (FEMA) officials to be informed of and take into account environmental considerations when authorizing or approving major FEMA actions that significantly affect the environment in the United States. The Council on Environmental Quality Regulations implement the procedural provisions, section 102(2), of the National Environmental Policy Act of 1969, as amended (hereinafter NEPA) (Pub. L. 91-190, 42 U.S.C. 4321 *et seq.*), and Executive Order 11991, 42 FR 26967 (1977).

(b) Section 1507.3, Council on Environmental Quality Regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) directs that Federal agencies shall adopt procedures to supplement the CEQ regulations. This regulation provides detailed FEMA implementing procedures to supplement the CEQ regulations.

(c) The provisions of this part must be read together with those of the CEQ regulations and NEPA as a whole when applying the NEPA process.

§ 10.2 Applicability and scope.

The provisions of this part apply to the Federal Emergency Management Agency, (hereinafter referred to as FEMA) including any office or administration of FEMA, and the FEMA regional offices.

§ 10.3 Definitions.

(a) Regional Director means the Regional Director of the Federal Emergency Management Agency for the region in which FEMA is acting.

(b) The other terms used in this part are defined in the CEQ regulations (40 CFR Part 1508).

§ 10.4 Policy.

(a) FEMA shall act with care to assure that, in carrying out its responsibilities, including disaster planning, response and recovery and hazard mitigation and flood insurance, it does so in a manner consistent with national environmental policies. Care shall be taken to assure, consistent with other considerations of national policy, that all practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving use of the environment without degradation, or undesirable and unintended consequences;

(2) Preserving historic, cultural and natural aspects of national heritage and maintaining, wherever possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) FEMA shall:

(1) Assess environmental consequences of FEMA actions in accordance with § 10.9 and § 10.10 of this part and Parts 1500-1508 of the CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences, and environmental considerations, in planning and decisionmaking where there is a potential for significant environmental impact;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider reasonable alternatives to recommended courses of action in any proposal that involves conflicts concerning alternative uses of resources; and

(5) Make available to States, counties, municipalities, institutions and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

§ 10.5 Responsibilities.

(a) *The Regional Directors* shall, for each action not categorically excluded from this regulation and falling within their respective jurisdictions:

(1) Prepare an environmental assessment and submit such assessment to

the Associate Director for Hazard Mitigation (ADHM) and the Office of General Counsel (OGC);

(2) Prepare a finding of no significant impact, or prepare an environmental impact statement;

(3) Coordinate and provide information regarding environmental review with applicants for FEMA assistance;

(4) Prepare and maintain an administrative record for each proposal that is determined to be categorically excluded from this regulation;

(5) Involve environmental agencies, applicants, and the public to the extent practicable in preparing environmental assessments;

(6) Prepare, as required, a supplement to either the draft or final environmental impact statement;

(7) Circulate draft and final environmental impact statements;

(8) Ensure that decisions are made in accordance with the policies and procedures of NEPA and this part, and prepare a concise public record of such decisions;

(9) Consider mitigating measures to avoid or minimize environmental harm, and, in particular, harm to and within floodplains and wetlands; and

(10) Review and comment upon, as appropriate, environmental assessments and impact statements of other Federal agencies and of State and local entities within their respective regions.

(b) *The Associate Director for Hazard Mitigation shall:* (1) Determine, on the basis of the environmental assessment whether an environmental impact statement is required, or whether a finding of no significant impact shall be prepared;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact;

(4) Review all proposed draft and final environmental statements;

(5) Publish the required notices in the FEDERAL REGISTER;

(6) Provide assistance in the preparation of environmental assessments and impact statements and assign lead agency responsibility when more than one FEMA office or administration is involved;

(7) Direct the preparation of environmental documents for specific actions when required;

(8) Comply with the requirements of this Part when the Director of FEMA promulgates regulations, procedures or other issuances making or amending Agency policy;

(9) Provide, when appropriate, consolidated FEMA comments on draft and final impact statements prepared for the issuance of regulations and procedures of other agencies;

(10) Review FEMA issuances that have environmental implications;

(11) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups, with respect to environmental analysis for FEMA actions affecting the environment.

(c) *The heads of the office and administrations of FEMA shall:* (1) Assess environmental consequences of proposed and on-going programs within their respective organizational units;

(2) Prepare and process environmental assessments and environmental impact statements for all regulations, procedures and other issuances making or amending program policy related to actions which do not qualify for categorical exclusions;

(3) Integrate environmental considerations into their decisionmaking processes;

(4) Ensure that regulations, procedures and other issuances making or amending program policy are reviewed for consistency with the requirements of this part;

(5) Designate a single point of contact for matters pertaining to this Part;

(6) Provide applicants for FEMA assistance with technical assistance regarding FEMA's environmental review process.

(d) *The Office of General Counsel of FEMA shall:* (1) Provide advice and assistance concerning the requirements of this Part;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact; and

(4) Review all proposed draft and final environmental impact statements.

§ 10.6 Making or amending policy.

For all regulations, procedures, or other issuances making or amending policy, the head of the FEMA office or administration establishing such policy shall be responsible for application of this part to that action. This does not apply to actions categorically excluded. For all policy-making actions not categorically excluded, the head of the office or administration shall comply with the requirements of this part. Thus, for such actions, the office or administration head shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region. For such policy-making actions taken by the Director of FEMA, the ADHM shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region.

§ 10.7 Planning.

(a) *Early Planning.* The Regional Director shall integrate the NEPA process with other planning at the earliest possible time to ensure that planning decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

(b) *Lead Agency.* To determine the lead agency for policy-making in which more than one FEMA office or administration is involved or any action in which another Federal agency is involved, FEMA offices and administrations shall apply criteria defined in § 1501.5 of the CEQ regulation. If there is disagreement, the FEMA offices and/or administrations shall forward a request for lead agency determination to the Associate Director for Hazard Mitigation (ADHM);

(1) The ADHM will determine lead agency responsibility among FEMA offices and administration.

(2) In those cases involving a FEMA office or administration and another Federal agency, the ADHM will attempt to resolve the differences. If unsuccessful, the ADHM will file the request with the Council on Environmental Quality for determination.

(c) *Technical Assistance to Applicants.* (1) Section 1501.2(d) of the CEQ regulations requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. To implement the requirements of § 1501.2(d),

(i) The heads of the FEMA offices and administration shall prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(ii) The Regional Director shall provide such guidance on a project-by-project basis to applicants seeking assistance from FEMA.

(iii) Upon receipt of an application for agency approval, or notification that an application will be filed, the Regional Director shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(2) To facilitate compliance with the requirements of paragraph (a) of this section, applicants and other non-Federal entities are expected to:

(i) Contact the Regional Director as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(ii) Conduct any studies which are deemed necessary and appropriate by FEMA to determine the impact of the proposed action on the human environment;

(iii) Consult with appropriate Federal, regional, State, and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(iv) Submit applications for all Federal, regional, State, and local approvals as early as possible in the planning process;

(v) Notify the Regional Director as early as possible of all other Federal, regional, State, local, and Indian tribe actions required for project completion so that FEMA may coordinate all Federal environmental reviews; and

(vi) Notify the Regional Director of all known parties potentially affected by or interested in the proposed action.

§ 10.8 Determination of requirement for environmental review.

The first step in applying the NEPA process is to determine whether to prepare an environmental assessment or an environmental impact statement. Early determination will help ensure that necessary environmental documentation is prepared and integrated into the decision-making process. Environmental impact statements will be prepared for all major Agency actions (see 40 CFR 1508.18) significantly (see 40 CFR 1508.27) affecting the quality of the human environment.

(a) In determining whether to prepare an environmental impact statement (EIS) the Regional Director will first determine whether the proposal is one which:

(1) Normally requires an environmental impact statement; or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) *Actions that Normally Require an EIS.* (1) In some cases, it will be readily apparent that a proposed action will have significant impact on the environment. In that event, the Regional Director will, pursuant to § 10.9(g) of this part, submit the notice of preparation of an environmental impact statement to the ADHM.

(2) To assist in determining those actions that normally do require an environmental impact statement, the following criteria apply:

(i) If an action will result in an extensive change in land use or the commitment of a large amount of land;

(ii) If an action will result in a land use change which is incompatible with the existing or planned land use of the surrounding area;

(iii) If many people will be affected;

(iv) If the environmental impact of the project is likely to be controversial;

(v) If an action will affect, in large measure, wildlife populations and their habitats, important natural resources, floodplains, wetlands, estuaries, beaches, dunes, unstable soils, steep slopes, aquifer recharge areas, or delicate or rare ecosystems, including endangered species;

(vi) If an action will result in a major adverse impact upon air or water quality;

(vii) If an action will adversely affect a property listed on the National Register of Historic Places or eligible for listing on the Register if, after consultation with the Advisory Council on Historic Preservation an environmental assessment is not deemed sufficient;

(viii) If an action is one of several actions underway or planned for an area and the cumulative impact of these projects is considered significant in terms of the above criteria;

(ix) If an action holds potential for threat or hazard to the public; or

(x) If an action is similar to previous actions determined to require an environmental impact statement.

(3) In any case involving an action that normally does require an environmental impact statement, the Regional Director may prepare an environmental assessment to determine if an environmental impact statement is required.

(c) *Categorical Exclusions.* The CEO regulations provide for the categorical exclusion (40 CFR 1508.4) of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA to avoid unnecessary or duplicative effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of Categorical Exclusions.* Categories of actions that have been determined by FEMA to have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments are:

(i) Preparation of regulations, directives, manuals, and other guidance related to actions which qualify for categorical exclusions;

(ii) Training activities and training exercises conducted on FEMA installations in accordance with established procedures and land use designations;

(iii) Procurement activities that provide goods and services for routine installation operations and support;

(iv) Routine installation, maintenance, and grounds-keeping activities;

(v) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes;

(vi) Studies that involve no commitment of resources other than manpower and funding; and

(vii) The following actions taken under the Disaster Relief Act of 1974 (Pub. L. 93-288), as amended:

(A) Emergency Support Teams (sec. 304);

(B) Unemployment Assistance (sec. 407);

(C) Disaster Legal Services (sec. 412);

(D) Emergency Communications (sec. 415);

(E) Emergency Public Transportation (sec. 416);

(F) Fire Suppression Assistance (sec. 417);

(G) Community Disaster Loans (sec. 414) except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(H) Debris Removal (sec. 403), except those grants involving nonemergency disposal or removal of debris;

(I) The following Individual and Family Grant Program (sec. 408) actions:

(*1*) Housing needs or expenses, except for restoring, repairing or building private bridges, purchase of mobile homes and provision of structures as minimum protective measures;

(*2*) Personal property needs or expenses;

(*3*) Transportation expenses;

(*4*) Medical/dental expenses;

(*5*) Funeral expenses;

(*6*) Limited home repairs;

(*7*) Flood insurance premium;

(*8*) Cost estimates;

(*9*) Food expenses; and

(*10*) Temporary rental accommodations; and

(J) Mortgage and rental assistance under sec. 404(b);

(K) Housing in existing resources (sec. 404);

(L) Minimal home repairs (sec. 404); and

(M) Crisis counseling assistance and training (sec. 413).

(viii) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of maintaining normal day to day actions.

(3) *Statutory Categorical Exclusions.* The following actions are categorically excluded from the preparation of environmental impacts statements and environmental assessments by sec. 405 of the Disaster Relief Act of 1974 (Pub. L. 93-288); as amended:

(i) Action taken or assistances provided under Sections 305, 306 or 403 of the Disaster Relief Act of 1974, as amended, (Pub. L. 93-288); and

(ii) Action taken or assistance provided under Section 402 or 419 of the Disaster Relief Act of 1974, as amended, that has the effect of restoring facilities substantially as they existed prior to a major disaster or emergency.

(d) *Changes to the List of Categorical Exclusions.* (1) The FEMA List of Categorical Exclusions will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. An office or administration of FEMA may, at any time, recommend additions or changes to the FEMA List of Categorical Exclusions.

(2) Offices and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(3) If an office or administration of FEMA proposes to change or add to the list of categorical exclusions, it shall first:

(i) Obtain the approval of the ADHM and FEMA's Office of General Counsel; and

(ii) Public notice of such proposed change or addition in the FEDERAL REGISTER at least 60 days prior to the effective date of such change or addition.

(e) *Extraordinary Circumstances.* If extraordinary circumstances exist, such that an action that is categorically excluded from NEPA compliance may have a significant environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Actions in highly populated or congested areas.

(3) Potential for degradation, even though slight, of already existing poor environmental conditions.

(4) Employment of unproven technology.

(5) Presence of endangered species, archaeological remains, or other protected resources.

(6) Use of hazardous or toxic substances.

(7) Actions in flood plains or wetlands.

(f) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(g) *Actions that Normally Require an Environmental Assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

[45 FR 41142, June 18, 1980, as amended at 46 FR 2049, Jan. 8, 1981]

§ 10.9 Preparation of environmental assessments.

(a) *When to Prepare.* The Regional Director shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is required. The Regional Director may prepare an environmental assessment at any time to assist planning and decision-making.

(b) *Content and Format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement, aiding in compliance with NEPA when no EIS is necessary, and facilitating preparation of a statement when one is necessary. Preparation of an environmental assessment generally will not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussion of the following:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered.

(4) Environmental impact of the proposed action and alternatives.

(5) Listing of agencies and persons consulted.

(6) Conclusion of whether to prepare an environmental impact statement.

(c) *Public Participation.* The Regional Director shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," the Regional Director shall consider:

(1) Magnitude of the proposal;

(2) Likelihood of public interest;

(3) Need to act quickly;

(4) Likelihood of meaningful public comment;

(5) National security classification issues;

(6) Need for permits; and

(7) Statutory authority of environmental agency regarding the proposal.

(d) *When to Prepare an EIS.* The Regional Director shall prepare an environmental impact statement for all major Agency actions significantly affecting the quality of the human environment. The test of what is a "significant" enough impact to require an EIS is found in the CEQ regulations at 40 CFR 1508.27.

(e) *Finding of No Significant Impact.* If the Regional Director determines on the basis of the environmental assessment not to prepare an environmental impact statement, the Regional Director shall prepare a finding of no significant impact in accordance with 40 CFR 1501.4(e) of the CEQ regulations. The assessment and the finding shall be submitted to the ADHM and the Office of General Counsel (OGC) for approval. If ADHM and OGC approval is obtained, the Regional Director shall then make the finding of no significant impact available to the public as specified in § 1506.6 of the CEQ regulations. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on a categorical exclusion.

(f) *ADHM or OGC Disallowance.* If the ADHM or OGC disagrees with the finding of no significant impact, the Regional Director shall prepare an environmental impact statement. Prior to preparation of an EIS, the Regional Director shall forward a notice of intent to prepare the EIS to the ADHM who shall publish such notice in the FEDERAL REGISTER.

(g) *EIS Determination of Regional Director.* The Regional Director may decide on his/her own to prepare an environmental impact statement. In such case, the Regional Director shall forward a notice of intent to prepare the EIS to the ADHM who shall publish such notice in the FEDERAL REGISTER. The notice of intent shall be published before initiation of the scoping process.

§ 10.10 Preparation of environmental impact statements.

(a) *Scoping.* After determination that an environmental impact statement will be prepared and publication of the notice of intent, the Regional Director will initiate the scoping process in accordance with § 1501.7 of the CEQ regulations.

(b) *Preparation.* Based on the scoping process, the Regional Director will begin preparation of the environmental impact statement. Detailed procedures for preparation of the environmental impact statement are provided in Part 1502 of the CEQ regulations.

(c) *Supplemental Environmental Impact Statements.* The Regional Director may at any time supplement a draft or final environmental impact statement. The Regional Director shall prepare a supplement to either the draft or final environmental impact statement when required under the criteria set forth in § 1502.9(2). The Regional Director will prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft or final statement and will introduce the supplement into their formal administrative record.

(d) *Circulation of Environmental Impact Statements.* The Regional Director shall circulate draft and final environmental impact statements as prescribed in § 1502.19 of CEQ regulations. Prior to signing off on a draft or final impact statement, the Regional Director shall obtain the approval of the ADHM and OGC.

§ 10.11 Environmental information.

Interested persons may contact the ADHM or the Regional Director for information regarding FEMA's compliance with NEPA.

§ 10.12 Pre-implementation actions.

(a) *Decision-Making.* The Regional Director shall ensure that decisions are made in accordance with the policies and procedures of the Act and that the NEPA process is integrated into the decision-making process. Because of the diversity of FEMA, it is not feasible to describe in this part the decision-making process for each of the various FEMA programs. Proposals and actions may be initiated at any level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, available funding, and statutory authority. FEMA offices and administrations shall provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decision-making process. The Regional Director shall:

(1) Consider all relevant environmental documents in evaluating proposals for Agency action;

(2) Make all relevant environmental documents, comments, and responses part of the record in formal rulemaking or adjudicatory proceedings;

(3) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing Agency review processes;

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for Agency action;

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) *Record of Decision.* In those cases requiring environmental impact statements, the Regional Director at the time of his/her decision, or if appropriate, his/her recommendation to Congress, shall prepare a concise public record of that decision. The record of decision is not intended to be an extensive, detailed document for the purpose of justifying the decision. Rather it is a concise document that sets forth the decision and describes the alternatives and relevant factors considered as specified in 40 CFR 1505.2. The record of decision will normally be less than three pages in length.

(c) *Mitigation.* Throughout the NEPA process, the Regional Director shall consider mitigating measures to avoid or minimize environmental harm and, in particular, harm to or within flood plains and wetlands. Mitigation measures or programs will be identified in the environmental impact statement and made available to decision-makers. Mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the Regional Director.

(d) *Monitoring.* If a Regional Director determines that monitoring is applicable for established mitigation, a monitoring program will be adopted to assure the mitigation measures are accomplished.

The Regional Director shall provide monitoring information, upon request, as specified in 40 CFR 1505.3. This does not, however, include standing or blanket requests for periodic reporting.

§ 10.13 Emergencies.

In the event of an emergency, the Regional Director may be required to take immediate action with significant environmental impact. The Regional Director shall notify the ADHM of the emergency action at the earliest possible time so that the ADHM may consult with the Council on Environmental Quality. In no event shall any Regional Director delay an emergency action necessary to the preservation of human life for the purpose of complying with the provision of this directive or the CEQ regulations.

§ 10.14 Flood plains and wetlands.

For any action taken by FEMA in a flood plain or wetland, the provisions of this Part are supplemental to, and not instead of, the provisions of the FEMA regulation implementing Executive Order 11988, Flood Plain Management, and Executive Order 11990, Protection of Wetlands (44 CFR Part 9).

PART 11—CLAIMS

Subpart A—General

Sec.
11.1 General Collection Standards.
11.2 Delegations of Authority.

Subpart B—Administrative Claims Under Federal Tort Claims Act

11.10 Scope of regulations.
11.11 Administrative claim; when presented; appropriate FEMA office.
11.12 Administrative claim; who may file.
11.13 Investigations.
11.14 Administrative claim; evidence and information to be submitted.
11.15 Authority to adjust, determine, compromise and settle.

Sec.
11.16 Limitations on authority.
11.17 Referral to Department of Justice.
11.18 Final denial of claim.
11.19 Action on approved claim.

Subpart C—Collection of Claims by the Government Under the Federal Claims Collection Act of 1966

11.30 Scope of regulations.
11.31 Incorporation of joint standards by reference.
11.32 Subdivision and joining of claims.
11.33 Authority of offices to attempt collection of claims.
11.34 Referral of claims to the Comptroller, Federal Emergency Management Agency.
11.35 Authority of offices to compromise claims or suspend or terminate collection action.
11.36 Agency claims officer.
11.37 Claims files.
11.38 Quarterly report of collection action.
11.39 Accounting control.
11.40 Record retention.
11.41 Suspension or revocation of eligibility.
11.42 Standards for collection of claims.
11.43 Standards for compromise of claims.
11.44 Standards for suspension or termination of collection action.
11.45 Referral to GAO or Justice Department.
11.46 Analysis of costs.
11.47 Automation.
11.48 Prevention of overpayments, delinquencies and defaults.
11.49 Office of General Counsel.

AUTHORITY: 28 U.S.C. 2672, 28 CFR 14.11, 5 U.S.C. 301, Reorganization Plan No. 3 of 1978, (43 FR 41943) Executive Order 12127 44 FR 19367, unless otherwise noted.

SOURCE: 45 FR 15930, Mar. 12, 1980, unless otherwise noted.

Subpart A—General

§ 11.1 General collection standards.

The general standards and procedures governing the collection, compromise, termination and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Part 101 *et seq.*), apply to the administrative claim collection activities of the Federal Emergency Management Agency (FEMA).

§ 11.2 Delegations of authority.

Any and all claims that arise under Subchapter III of Chapter 83, Chapter 87 and Chapter 88 of title 5, the United States Code, the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widow's Annuity Act (64 Stat. 465) shall be referred to the Director of the Bureau of Retirement and Insurance, Office of Personnel Management, for handling. The General Counsel, FEMA shall act on all other claims against FEMA for money and property.

Subpart B—Administrative Claims Under Federal Tort Claims Act

§ 11.10 Scope of regulation.

This regulation applies to claims asserted under the Federal Tort Claims Act against the Federal Emergency Management Agency (FEMA). It does not include any contractor with FEMA.

§ 11.11 Administrative claim; when presented; appropriate FEMA office.

(a) For the purpose of this part, and the Provisions of the Federal Tort Claims Act a claim is deemed to have been presented when FEMA receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury," Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to FEMA, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to FEMA as of the date that the claim is received by FEMA. If a claim is mistakenly addressed to or filed with FEMA, the claim shall forthwith be transferred to the appropriate Federal Agency, if ascertainable, or returned to the claimant.

(b) Except as provided in paragraph (c) of this section, a claimant shall mail or deliver his or her claim to the Office of General Counsel, Federal Emergency Management Agency, 1725 I Street, NW., Washington, D.C. 20472.

(c)(1) When a claim is for $200 or less, does not involve a personal injury, and involves a FEMA regional employee, the claimant shall mail or deliver the claim to the Director of the FEMA Regional Office in which is employed the FEMA employee whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. The addresses of the Regional Office of FEMA are set out in Appendix A to Part 5 of this chapter.

(d) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final FEMA action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, FEMA shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

§ 11.12 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his or her authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he or she shall present with the claim appropriate evidence that he or she has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title of legal capacity of the person signing, and be accompanied by evidence of his or her authority to represent a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 11.13 Investigations.

FEMA may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 11.14 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills or medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for

pain, and the decedents physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his or her attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by FEMA or another Federal agency. FEMA shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he or she has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to FEMA any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment of such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from the employer showing actual time lost from employment, whether he or she is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 11.15 Authority to adjust, determine, compromise and settle.

(a) The General Counsel of FEMA, or a designee of the General Counsel is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of Title 18, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Director is delegated authority to be exercised in his or her discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part, any claim for $200 or less which is based on alleged negligence or wrongful act or omission of an employee of the appropriate Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used by FEMA, or both, is more than $200, or all damage to non-Government property being used by individuals not em-

ployed by the Government is more than $200.

§ 11.16 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of $25,000 may be effected only with the advance written approval of the Attorney General or his or her designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice, when, in the opinion of the General Counsel of FEMA or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and FEMA is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled under this part only after consultation with the Department of Justice when FEMA is informed or is otherwise aware that the United States or an employee, agent or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 11.17 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 11.16, the referral or request shall be transmitted to the Department of Justice by the General Counsel or his or her designee.

§ 11.18 Final denial of claim.

(a) Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the FEMA action, he or she may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, his or her duly authorized agent, or legal representative, may file a written request with FEMA for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the FEMA shall have 6 months from the date of filing in which to make a final FEMA disposition of the claim and the claimants option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final FEMA action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 11.19 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury," Standard Form 95, or a claims settlement agreement, and (2) a "Voucher for Payment," Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his or her attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his or her agency, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Subpart C—Collection of Claims by the Government Under the Federal Claims Collection Act of 1966

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 952; 4 CFR Parts 101-105.

SOURCE: 45 FR 63854, Sept. 26, 1980, unless otherwise noted.

§ 11.30 Scope of regulations.

(a) *Scope.* This subpart sets forth the regulations of the Director of the Federal Emergency Management Agency (the Agency) implementing the Federal Claims Collection Act of 1966 (the Act), in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR Parts 101 through 105. The Act (1) requires the Director or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the Agency; and (2) authorizes the Director or his designee for claims that do not exceed $20,000 exclusive of interest, to compromise such claims or to suspend or terminate collection action where it appears that no person liable on such claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting such claim is likely to exceed the amount of recovery.

(b) *Definitions.* For the purposes of this subpart, "office" means one of the following: (1) Office of Training and Education, (2) The Federal Insurance Administration, (3) Office of Plans and Preparedness, (4) Office of State and Local Programs and Support, (5) The U.S. Fire Administration, (6) Office of Resource Management and Administration, and (7) the Offices of the Regional Directors.

[46 FR 46934, Sept. 23, 1981]

§ 11.31 Incorporation of joint standards by reference.

All administrative actions to collect claims arising out of the activities of the Agency shall be performed in accordance with the applicable standards prescribed in 4 CFR Parts 101 through 105, which are adopted as a part hereof and supplemented in this subpart. Additional guidance will be found in the GAO Policy and Procedures Manual for Guidance of Federal Agencies and in the Treasury Fiscal Requirements Manual.

§ 11.32 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding $20,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than $20,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed $20,000 exclusive of interest.

§ 11.33 Authority of offices to attempt collection of claims.

The head of each office shall designate a claims collection officer, who shall attempt to collect in full all claims of the Agency for money or property arising out of the activities of such office. Each claims collection officer shall establish and currently maintain a file with regard to each claim for which collection activities are undertaken.

§ 11.34 Referral of claims to the Comptroller, Federal Emergency Management Agency.

(a) Authority of the Comptroller, Federal Emergency Management Agency.

(1) The Comptroller, Federal Emergency Management Agency shall act as the Agency Claims Officer and shall exercise the powers and perform the duties of the Director to compromise, or to suspend or terminate collection action on all Agency claims not exceeding $20,000 exclusive of interest, except as provided in § 11.35 and paragraph (b) of this section.

(2) When initial attempts at collection by the office originating such claim have not been fully successful, the claim file shall be forwarded to the Agency Claims Officer for further administrative collection procedures. Claims shall be referred to the Agency Claims Officer well within the applicable statute of limitations (28 U.S.C. 2415 and 2416).

(b) *Exclusions.* There shall be no compromised or terminated collection action with respect to any claim: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the anti-trust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such claims shall be promptly referred to the Justice Department, or GAO, as appropriate, after the Agency Claims Officer has consulted with the Inspector General and the Office of General Counsel.

[46 FR 46934, Sept. 23, 1981]

§ 11.35 Authority of offices to compromise claims or suspend or terminate collection action.

Where it appears that the cost of collecting a claim of less than $600 will exceed the amount of recovery, the claims collection officer is authorized to compromise the claim or to terminate collection action.

§ 11.36 Agency claims officer.

The Comptroller, Federal Emergency Management Agency, is designated as the Agency Claims Officer, and shall be responsible for the establishment and maintenance of procedures within the Agency relating to the collection of claims and the coordination of all collection activities in all Agency offices.

[46 FR 46935, Sept. 23, 1981]

§ 11.37 Claims files.

Each claims collection officer is responsible for obtaining current credit data about each person against whom a claim is pending in his office. The files shall be kept up-to-date by the Agency Claims Officer for claims referred to the Agency Claims Officer for collection. Such credit data may take the form of (a) a commercial credit report, showing the debtor's assets and liabilities and his income and expenses, (b) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (c) an audited balance sheet of a corporate debtor. The file should also contain a checklist or brief summary of actions taken to collect or compromise a claim.

[46 FR 46935, Sept. 23, 1981]

§ 11.38 Quarterly report of collection action.

The Agency Claims Officer shall make a quarterly report to the Director and to all offices that have referred claims for collection. The report should contain the following information as a minimum:

(a) All outstanding claims referred to the Agency Claims Officer for administrative collection, including the name and address of the debtor, the amount of the claim, the date the claim accrued, the basis of the claim, the office referring the claim, and the current program of collection activities.

(b) All claims referred to the Office of General Counsel for legal guidance.

(c) All claims compromised or on which collection has been suspended or terminated or referred to GAO or Justice for further collection action during the month. The collection action taken and the basis for the action should be indicated.

(d) All claims referred to the Department of Justice under § 11.45.

(e) Claims returned to this Agency by the Justice Department for further collection action because Justice's handling was not warranted.

[46 FR 46935, Sept. 23, 1981]

§ 11.39 Accounting control.

Each office shall process all claims collections through the Agency Claims Officer and report the collection, compromise, suspension and termination of all claims to that office for recording.

[46 FR 46935, Sept. 23, 1981]

§ 11.40 Record retention.

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate officer not less than 1 year after the applicable statute of limitations has run.

§ 11.41 Suspension or revocation of eligibility.

(a) Where a contractor, grantee, or other participant in programs sponsored by the Agency fails to pay his debts to the Agency within a reasonable time after demand, the fact shall be reported by the Agency Claims Officer to the Inspector General, who shall place such defaulting participant's name on the Agency's list of debarred, suspended and ineligible contractors and grantees and the participant will be so advised.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the Agency Claims Officer, who shall so advise the Treasury Department. The Treasury Department will notify this Agency when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

[46 FR 46935, Sept. 23, 1981]

§ 11.42 Standards for collection of claims.

(a) *Demand for payment.* Appropriate written demands shall be made upon the debtor which shall include information relating to the consequences of his failure to cooperate. The date due should be specified and, normally, should be not more than 30 days from the date of the initial notification. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal.

(b) *Collection by offset.* Collection by offset will be administratively undertaken on claims which are liquidated or certain in amount in every instance where this is feasible. All offices should consult with the Agency Collection Office to determine if an offset is feasible.

(c) *Liquidation of collateral.* Where the Agency holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

(d) *Collection in installments.* Claims with accrued interest should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments.

(e) *Interest.* In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract, or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See *Rodgers v. United States,* 332 U.S. 371.

(f) *Reporting delinquent debts to commercial credit bureaus.* The Agency shall report delinquent debts to commercial credit bureaus, giving due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Prior to excercising this option, the Agency shall send a demand letter advising the debtor that such a reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

(g) *Omission not a defense.* Failure to comply with any standard prescribed in 4 CFR Chapter II, or in this subpart shall not be available as a defense to any debtor.

(h) All administrative collection acts shall be adequately documented and retained in the appropriate claims file.

[45 FR 63854, Sept. 26, 1980, as amended at 46 FR 46935, Sept. 23, 1981]

§ 11.43 Standards for compromise of claims.

(a) *Compromise.* A claim may be compromised: (1) If the debtor is not able to pay the full amount within a reasonable period of time; (2) if the debtor refuses to pay the claim in full and the Agency is unable to enforce collection within a reasonable time by enforced collection proceeding; (3) if there is real doubt concerning the Agency's ability to prove its case in court for the full amount claimed; (4) if the cost of collecting the claim does not justify the enforced collection of the full amount; (5) if in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the Agency's enforcement policy will be adequately served by acceptance of the sum to be agreed upon; or (6) for other reasons deemed valid by the General Counsel.

(b) *Documentary evidence of compromise.* No compromise of a claim shall be final or binding on the Agency unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

§ 11.44 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* Collection action shall be suspended temporarily on a claim when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is presently unable to make payment on the Agency's claim or effect a compromise, but his future prospects justify retention of the claim for periodic review and action, and, (1) the applicable statute of limitations has been tolled or started anew, or (2) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

(b) *Termination of collection action.* Collection action may be terminated and the Agency file closed for the following reasons: (1) No substantial amount can be collected; (2) the debtor cannot be located; (3) the cost will exceed recovery; (4) the claim is legally without merit; or (5) the claim cannot be substantiated by evidence.

§ 11.45 Referral to GAO or Justice Department.

(a) *Claims referred.* Claims which cannot be collected, compromised, or terminated in accordance with 4 CFR Parts 101 to 105 will be referred to the Agency Claims Officer for referral to the General Accounting Office in accordance with 31 U.S.C. 71, or to the Department of Justice if this Agency has been granted an exception from referrals to the General Accounting Office. Also, if there is doubt as to whether collection action should be suspended or terminated on a claim, the claim may be referred to the General Accounting Office for advice. When recovery of a judgment is prerequisite to imposition of administrative sanctions, the claim may be referred to the Justice Department for litigation even though termination of collection activity might otherwise be considered. Referral to the General Accounting Office or to the Department of Justice should be done after consulting with the Office of General Counsel, FEMA.

(b) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action, and, in any event, well within the statute of limitations for bringing suit against the debtor.

[46 FR 46935, Sept. 23, 1981]

§ 11.46 Analysis of costs.

The Agency Claims Officer shall provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceeed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

§ 11.47 Automation.

The Agency Claims Officer shall work to automate the Agency's debt collection operations to the extent it is cost effective and feasible.

[46 FR 46935, Sept. 23, 1981]

§ 11.48 Prevention of overpayments, delinquencies and defaults.

The Agency Collection Officer shall establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed. All debts or loans, when first established, may be reported to commercial credit bureaus.

§ 11.49 Office of General Counsel.

The Office of General Counsel shall provide legal advice on claims collection matters to all claims collection officers and the Agency Collection Officer, as needed.

[46 FR 46935, Sept. 23, 1981]

PART 12—ADVISORY COMMITTEES

Sec.

12.1 Purpose and applicability.
12.2 Definitions.
12.3 Policy.
12.4 Interpretations.
12.5 Advisory committee management officer.
12.6 Establishment of advisory committees.
12.7 Charter.
12.8 Meetings.
12.9 Closed meetings.
12.10 Designated Federal officer or employee.
12.11 Public notice.
12.12 Minutes.
12.13 Transcripts of the advisory committee meetings and agency proceedings.
12.14 Annual comprehensive review.
12.15 Termination and renewal of advisory committees.
12.16 Reports about the advisory committees.
12.17 Availability of documents and information on advisory committees.
12.18 Uniform pay guidelines.
12.19 Fiscal and administrative responsibilities.

AUTHORITY: Federal Advisory Committee Act 5 USC App 1; Reorganization plan No. 3, 1978 3 CFR 1978 Comp. p. 329; Executive Order 12127, March 31, 1979 44 FR 19367; Executive Order 12148, July 20, 1979 44 FR 43239; Executive Order 11769 39 FR 7125.

SOURCE: 45 FR 64180, Sept. 29, 1980, unless otherwise noted.

§ 12.1 Purpose and applicability.

(a) The regulations in this part implement the Federal Advisory Committee Act, Executive Order 11769 and Office of Management and Budget Circular No. A-63. The provisions of the Federal Advisory Committee Act in this part shall apply to all advisory committees established by the Federal Emergency Management Agency (FEMA), including advisory committees created pursuant to any act of Congress relating to the United States Fire Administration, Federal Insurance Administration, or any other component of the Federal Emergency Management Agency, except to the extent that any act of Congress establishing an Advisory committee reporting to the agencies specifically provides otherwise.

(b) This part does not apply to interagency advisory committees or advisory committees established by the President unless specifically made applicable by the establishing authority.

(c) This part does not apply to any local group, contractor, grantee, or other organization whose primary function is to render public service with respect to a Federal program, or any state or local committee, counsel, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 12.2 Definitions.

As used in this part—

"Act" means the Federal Advisory Committee Act (86 Stat. 770).

"Advisory Committee" is used as per the meaning set forth in Sec. 3(2) of the Act.

"Agency" means the Federal Emergency Management Agency, established by Presidential Reorganization Plan #3 of 1978, or any component thereof.

"Administrator, GSA" means the Administrator of General Services.

"Director" means the Director of the Federal Emergency Management Agency.

"FEMA" means the Federal Emergency Management Agency.

"GSA" means the General Services Administration.

"Presidential Advisory Committee" means an advisory committee which advises the President of the United States.

"Secretariat" means the Committee Management Secretariat of the General Services Administration.

"Any officer of the Federal Government" means any agency official or employee of the Federal government designated to perform duties with respect to an advisory committee established under this part.

"Nonstatutory advisory committee" means an advisory committee not established by statute or reorganization plan.

§ 12.3 Policy.

In determining whether an advisory committee should be created, and in reviewing the functions of operating advisory committees, the Agency will:

(a) Establish new advisory committees only when they are determined to be essential, keeping their number to the minimum necessary to accomplish the assigned mission of the agency or its components;

(b) Provide standards and uniform procedures to govern the establishment, operation, administration, and duration of the advisory committees;

(c) Terminate the advisory committees when they are no longer necessary to carry out the purposes for which they were established; and

(d) Keep the Congress and the public informed with respect to the number, purpose, membership, activity, and cost of the advisory committees.

§ 12.4 Interpretations.

Except as specifically authorized in writing by the Director, including internal instructions, no interpretation of the meaning of the regulations in this part by any employee or officer of the Agency, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Agency.

§ 12.5 Advisory committee management officer.

(a) The Director will designate as advisory committee management officer the Chief, Management Planning Branch, Administrative Services Division, Office of Finance and Administration, who shall:

(1) Exercise control and supervision over the establishment, procedures, and accomplishments of the advisory committees established by the Director; and

(2) Assemble and maintain the reports, records, and other papers of any advisory committee during its existence.

(b) The name of the Advisory Committee Management Officer designated in accordance with this part shall be provided to the Secretariat.

§ 12.6 Establishment of advisory committees.

(a) No Advisory Committee shall be established under this part unless such establishment is:

(1) Specifically authorized by statute or the President of the United States; or

(2) Determined as a matter of formal record by the Director after consultation with the Secretariat, with timely notice published in the FEDERAL REGISTER as a matter of the public interest, in connection with the performance of duties imposed on the agency by law.

(b) The determination required by paragraph (a)(2) of this section shall:

(1) Contain a clearly defined purpose for the advisory committee;

(2) Require the membership of the advisory committee to be fairly balanced in terms of the points of view represented in the functions performed by the advisory committee;

(3) Contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) Contain provisions dealing with the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the agency determines the provisions of §12.16 of this part to be inadequate; and

(5) Contain provisions which will assure that the advisory committee will have adequate staff (either supplied by the Agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) Consultation with the Secretariat may be in the form of a letter from the Agency describing the nature and purpose of the proposed advisory committee, including an explanation of why the functions of the proposed committee could not be performed by FEMA or by an existing committee. The letter should describe the Agency's plan to attain balanced membership on the proposed committee, as prescribed in paragraph (b)(2) of this section. If the Secretariat is satisfied that the establishment of the advisory committee will be in accord with the Act, the Agency shall certify in writing that creation of the advisory committee is in the public interest.

(d) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions.

§ 12.7 Charter.

(a) No advisory committee established under this part shall meet or take any action until an advisory committee charter has been filed with the Agency and the standing Committee or Committees of the Senate and House of Representatives having legislative jurisdiction over the FEMA component to which the advisory committee renders its advice.

(b) The charter required by paragraph (a) of this section shall contain at least the following information:

(1) The committee's official designations;

(2) The committee's objectives and the scope of its activities;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The FEMA component and official to whom the committee reports;

(5) The FEMA component responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, specification of the authority for such functions;

(7) The estimated annual operating cost in dollars and man years for the committee;

(8) The estimated number in frequency of committee meetings;

(9) The committee's termination date, if less than 2 years from the date of committee's establishment; and

(10) The date the charter is filed.

(c) A copy of the charter required by paragraph (a) of this section shall also be furnished at the time of filing to the Library of Congress, Exchange and Gift Division, Federal Advisory Committee—Washington, D.C. 20540.

(d) An amendment to the charter may be filed whenever there is a substantial change regarding matters stated in the original charter.

(e) The requirements of this section shall also apply to committees utilized as advisory committees, even though not expressly established for that purpose.

§ 12.8 Meetings.

(a) Advisory committees established under this part shall not hold any meetings, nor shall they render any advice, except at the call of, or with the advice and approval of, the Federal Officer or employee designated in accordance with § 12.10 of this part, who shall also approve the agenda of such meetings. Timely notice of each meeting shall be provided in accordance with § 12.11 of this part.

(b) The agenda required by paragraph (a) of this section shall list the matters to be considered at the meeting. It shall also indicate when any part of the meeting will concern matters within the exceptions of the (Government) Sunshine Act, 5 U.S.C. 552b, and § 12.9 of this part.

(c) Subject to the provisions of § 12.9 of this part, each advisory committee meeting shall be open to the public. Meetings which are completely or partly open to the public shall be held at reasonable times and at such a place that is reasonably accessible to the public. The size of the meeting room should be determined by such factors as the size of the committee, the number of members of the public who could reasonably be expected to attend, the number of persons who attended similar meetings in the past, and the resource facilities available.

(d) Any member of the public shall be permitted to file a written statement with the committee related to any meeting that is completely or partly open to the public. Interested persons may also be permitted by the committee chairman to speak at such meetings in accordance with the procedures established by the committee.

§ 12.9 Closed meetings.

(a) The requirements of § 12.8 (c) and (d) of this part that meetings shall be open to the public and that the public shall be afforded an opportunity to participate in such meetings shall not apply to any advisory committee meeting which the President or the Director determines is concerned with matters listed in 5 U.S.C. 552b(c).

(b) An advisory committee which seeks to have all or part of its meetings closed shall notify the Director before the scheduled date of the meeting. The notification shall be in writing and shall specify the reasons why any part of the meeting should be closed.

(c) A request that the meeting be closed will be granted upon determination by the Director that the request is in accordance with the policies of this part. The Director's determination will be in writing and will state the specific reasons for closing all or part of the meeting. The determination will be made available to the public upon request.

(d) The Director may delegate responsibility for making the determination required by paragraph (c) of this section. In any case where the determination to close the meeting is made by the Director's delegate, the determination will be reviewed by the General Counsel.

(e) When a meeting is closed to the public, the advisory committee shall issue a report, at least annually, setting forth a summary of its activities in such meetings, addressing those related matters as would be informative to the public and consistent with the policy of 5 U.S.C. 552b(c) and of this part. Notice of the availability of such annual reports shall be published in accordance with § 12.11 of this part.

§ 12.10 Designated Federal officer or employee.

(a) The Agency will designate an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee established under this part.

(b) No advisory committee shall conduct any meeting in the absence of the Federal employee or officer designated in accordance with paragraph (a) of this section.

(c) The Federal officer or employee designated in accordance with paragraph (a) of this section is authorized, whenever he/she determines it to be in the public interest, to adjourn any committee meeting he/she is designated to chair or attend.

§ 12.11 Public notice.

(a) The Agency's determination procedure described by § 12.6 of this part for the creation of the advisory committee, and a description of the nature and purpose of the committee, should be published in the FEDERAL REGISTER at least 15 days prior to the filing of the committee's charter, unless the Secretariat, for good cause, authorizes a shorter period of time between publication of the notice and the filing of the charter.

(b) Except when the Administrator GSA determines contrarily for reasons of national security, timely notice of each advisory committee meeting, whether open or closed to the public, shall be published in the FEDERAL REGISTER at least 15 days before the meeting date. Such notice should state the name of the advisory committee, the time, place and purpose of the meeting, and should include, where appropriate, a summary of the meeting agenda. Notice ordinarily should state that the meeting is open to the public or explain why the meeting or any portion of the meeting is to be closed. Notices shorter than the time prescribed by this paragraph may be provided in emergency situations, and the reasons for such emergency exceptions should be made part of the meeting notice. *Due to the emergency nature of FEMA's many programs, it is contemplated that advisory committees may have to be established or meetings called on fairly short notice; however, every effort should be made to comply with the notice requirement, except in cases where delay may result in harm to individuals or damage to property.* A request for a determination that notice of a meeting should not be published for reasons of national security shall be submitted to the Administrator GSA with a statement of reasons supporting such request at least 30 days before the meeting is scheduled. Where, however, there is a significant likelihood of severe damage to property or injury to individuals, the notice period may be reduced as necessary to minimize such damage or injury.

(c) In addition to the notice required by paragraph (b) of this section, other forms of notice such as public releases and notices by mail should be used to inform the public of advisory committee meetings.

(d) The Committee Management Officer, in coordination with the Office of Public Affairs, should, where practical, maintain lists of people and organizations interested in advisory committees and notify them of meetings by mail.

(e) Notice of the availability of the annual reports required by § 12.9(e) of this part will be published in the FEDERAL REGISTER no later than 60 days after their completion. Notice will include instructions which will allow the public access to the reports.

§ 12.12 Minutes.

(a) Detailed minutes of each advisory committee meeting shall be kept and shall contain a record of the persons present, a complete summary of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The record of persons present shall include the time and place of the meeting, a list of advisory committee members and staff and agency employees present at the meeting, a list of members of the public who presented oral or written statements, and an estimated number of members of the public who attended the meeting. The minutes shall describe the extent to which the meeting was open to the public and the extent of public participation. If it is impracticable to attach to the minutes of the meeting any report received, issued, or approved by the advisory committee, then the minutes will describe the report in sufficient detail to enable any person requesting the report to readily identify it.

(b) The accuracy of all minutes shall be certified by the chairperson of the advisory committee concerned, except in the case of a subcommittee or subgroup of the advisory committee, in which case the accuracy of the minutes shall be certified by the chairperson of the subcommittee or subgroup concern *and co-signed by the chairperson of the advisory committee.*

§ 12.13 Transcripts of the advisory committee meetings and agency proceedings.

Copies of transcripts of advisory committee meetings which have been prepared will be made available to any person at the actual cost of duplication, as prescribed in § 12.17 of this part.

§ 12.14 Annual comprehensive review.

(a) The Agency will conduct an annual comprehensive review of the activities and responsibilities of each advisory committee to determine:

(1) Whether such committee is carrying out its purpose;

(2) Whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) Whether it should be merged with any other advisory committee or committees; or

(4) Whether it should be abolished.

(b) Pertinent factors to be considered in the comprehensive review required by paragraph (a) of this section includes the following:

(1) The number of times the committee has met in the past year;

(2) The number of reports or recommendations submitted by the committee;

(3) An evaluation of the substance of the reports or recommendations submitted by the committee, regarding the Agency's programs or operations;

(4) An evaluation of the utilization by the Agency of the committee's policy formation recommendations in: program planning, decision making, more effective achievement of program objectives, and more economical accomplishment of programs in general, with emphasis in such evaluation on the preceding 12 month period of the committee's work;

(5) Whether information or recommendations could be obtained from sources within the Agency or from other advisory committees already in existence;

(6) The degree of duplication of effort by the committee as compared with that of other parts of the Agency or other advisory committees; and

(7) The estimated annual cost of the committee.

(c) The annual review required by this section shall be conducted on a calendar year basis, and results of the review shall be included in the annual report to the Secretariat required by § 12.16(b) of this part. The report shall contain a justification of each advisory committee which the Agency determines should be continued, making reference, as appropriate, to the factors specified in paragraph (b) of this section.

(d) The review will examine all advisory committees, and committees found to be no longer needed shall be terminated. Advisory committees established by act of Congress or the President of the United States will be reviewed, and if appropriate, their termination will be recommended.

§ 12.15 Termination and renewal of advisory committees.

(a) Each advisory committee shall terminate not later than the expiration of the 2 year period beginning on the date of its establishment, unless:

(1) In the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(2) In the case of an advisory committee established by an Act of Congress, its duration is otherwise provided by law.

(b) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive 2-year periods by appropriate action taken by the President or such officer prior to the date on which the advisory committee would otherwise terminate.

(c) Before it renews a non-statutory advisory committee in accordance with paragraphs (a) or (b) of this section, the Agency will inform the Secretariat by letter, not more than 60 days nor less than 30 days before the committee expires, of the following:

(1) Its determination that a renewal is necessary and is in the public interest;

(2) The reasons for its determination;

(3) The Agency's plan to attain balanced membership on the committee;

(4) An explanation of why the committee's functions cannot be performed by the Agency or by an existing advisory committee.

(d) After concurrence by the Secretariat, the Agency will certify in writing that the renewal of the advisory committee is in the public interest, and will publish a notice of the renewal in the FEDERAL REGISTER, and will file a new charter in accordance with § 12.7 of this part.

(e) Any advisory committee established by an Act of Congress shall file a charter in accordance with § 12.7 of this part upon the expiration of each successive 2-year period following the date of enactment of the Act establishing such advisory committee.

(f) No advisory committee required under this section to file a charter shall take any action, other than preparation and filing of such charter, between the date the new charter is required and the date on which such charter is actually filed.

§ 12.16 Reports about the advisory committees.

(a) The Agency will furnish a report of the activities of the FEMA advisory committees annually to the Administrator, General Services Administration, in accordance with the Federal Property Management Regulations Temporary Regulation B-1.

(b) The Agency will furnish a report of the activities of FEMA advisory committee annually to the Secretariat in accordance with OMB Circular A-63.

(c) The Agency will inform the Secretariat, by letter, of the termination of, or other significant changes with respect to, its advisory committees no later than 10 working days following the end of the month in which the committee is changed. If no changes are made during any given month the report of the Secretariat is not required.

§ 12.17 Availability of documents and information on advisory committees.

(a) Subject to the provisions of §§ 12.12 and 12.13 of this part, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for by each advisory committee shall be available for public inspection and copying at a single location in the FEMA Headquarters, 1725 I Street, N.W., Washington, D.C. 20472, in accordance with the regulations in Part 5 of this chapter.

(b) The Agency will maintain systematic information on the nature, functions, and operations of each of its advisory committees. A complete set of the charters of the Agency's advisory committees and copies of the annual reports required by § 12.16 will be maintained for public inspection in the FEMA Headquarters.

§ 12.18 Uniform pay guidelines.

(a) *Members.* Subject to the provisions of this section, the pay of any member of an advisory committee shall be fixed at the daily equivalent rate of the FEMA general salary schedule unless the member is appointed as a consultant, to be compensated as provided in paragraph (c) of this section. In determining an appropriate rate of pay for the members of an advisory committee, consideration shall be given to the significance, scope and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required of the members of the advisory committee. The pay of the members of an advisory committee shall not be fixed at a rate higher than the daily equivalent of the maximum rate for GS-15 unless the Director has determined that, under the factors set forth in this paragraph, a higher rate of pay is justified and necessary. Such a determination will be reviewed annually by the Director.

(b) *Advisory Committee Staff.* The pay of each member of the staff of an advisory committee shall be fixed at a rate of the general salary schedule in which the staff member's position would be appropriately compensated for in the FEMA evaluation system applicable to the position. Pay of the member of the staff of an advisory committee shall not be fixed at a rate higher than the daily equivalent of the maximum rate for a GS-15 unless the Director or his designee has determined that, under its evaluation system, the staff member's position would appropriately be placed in the General Salary Schedule at a grade higher than GS-15. Such a determination will be reviewed by the Director annually.

(c) *Consultants.* The rate of pay of a consultant to an advisory committee shall not exceed the maximum rate of pay which FEMA may pay experts and consultants under 5 U.S.C. 3109. Consideration shall be given to the qualifications required of the consultant and the significance, scope, and technical complexity of the work in fixing the rate of pay for the consultants.

(d) *Voluntary Services.* The provisions of this section shall not prevent FEMA from accepting the voluntary services of a member of an advisory committee, or a member of the staff of an advisory committee, provided that FEMA has the authority to accept such services without compensation.

(e) *Reimbursable Travel Expenses.* The members of an advisory committee and the staff thereof, while engaged in the performance of their duties away from their home or regular places of business, may be allowed travel expenses, including per diem and in lieu of subsistences, as authorized by 5 U.S.C. 5703 for persons employed intermittently in the government service.

§ 12.19 Fiscal and administrative responsibilities.

(a) The Director, Finance and Administration, FEMA, shall keep such records as will fully disclose the disposition of any funds which may be at the disposal of any FEMA advisory committee.

(b) The FEMA Advisory Committee management Officer or designee shall keep such records as are necessary to fully disclose the nature and extent of the activities of the FEMA advisory committees.

(c) Support services shall be provided by FEMA for each advisory committee established by or reporting to it, unless the establishing authority provides otherwise. Where such advisory committee reports to more than one agency, only one agency or component thereof shall be responsible for support services at any one time, and the establishing authority shall designate the agency responsible for providing such services.

PARTS 13—49—[RESERVED]

SUBCHAPTER B—FEDERAL INSURANCE ADMINISTRATION

NOTE: Nomenclature changes to Subchapter B appear at 44 FR 31177, May 31, 1979 and 44 FR 62517, October 31, 1979.

PARTS 50—54—[RESERVED]

NATIONAL INSURANCE DEVELOPMENT PROGRAM

PART 55—STATEWIDE "FAIR" PLANS

Sec.
55.1 Definitions.
55.2 Composition and supervision of FAIR Plan.
55.3 Coverage and operation of the Plan.
55.4 Insurer participation and placement program.
55.5 Inspections and applications for insurance.
55.6 Deemer or binder requirement.
55.7 Placement action after inspection report.
55.8 [Reserved]
55.9 Notice of cancellation or nonrenewal.
55.10 Impartial selection of adjusters.
55.11 Coding and reports under the Plan.
55.12 Inapplicability and waiver of regulations.
55.13 Notice to policyholders.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 36 FR 24751, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 55.1 Definitions.

As used in this part—

(a) "Act" means the Urban Property Protection and Reinsurance Act of 1968, codified as title XII of the National Housing Act (12 U.S.C. 1749bbb-1749bbb-21), which authorized the program. Section references are to the National Housing Act;

(b) "Administrator" means the Federal Insurance Administrator within the Federal Emergency Management Agency, to whom the Director has delegated the administration of the program (34 FR 2680, Feb. 27, 1969);

(c) "Applicant" means any property owner, or his authorized representative, who duly requests essential property insurance for a risk eligible under a FAIR Plan;

(d) "Binder" means a temporary and preliminary contract of insurance to protect owner against loss from the occurrence of an insurable event before a policy is issued;

(e) "Deemer provision" means a provision in a Plan whereby interim coverage for an eligible risk is deemed automatically to attach upon the expiration of a specified period of time after an application for inspection and insurance;

(f) "Eligible property," "eligible risk," or "risk eligible under the Plan" means any real property, personal property, or mixed real and personal property, potentially insurable under one or more lines of essential property insurance, subject to an inspection to ascertain insurability and applicable premium rates;

(g) "Environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner or tenant;

(h) "Essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsement thereon, as approved by the State insurance authority, and insurance against the perils of vandalism and malicious mischief. Such insurance shall not include automobile insurance and shall not include insurance on such type of manufacturing risks as may be excluded by the State insurance authority;

(i) "FAIR Plan" or "Plan" means a statewide Plan to assure "fair access to insurance requirements" that is approved by the Administrator as meeting the criteria of Part A of the Act, including such modifications thereof as the Administrator may promulgate from time to time under this part in accordance with subsection 1214(b) of the Act (12 U.S.C. 1749bbb-6(b));

(j) "Inspection facility," with respect to any State, means any rating bureau or other person duly authorized and designated to perform inspections under a Plan;

(k) "Insurer" includes any property insurance company, or group of companies under common ownership or common management, authorized to engage in the insurance business under the laws of at least one State;

(l) "Participating insurer" means any insurer eligible for membership in a Plan and fully participating in that Plan. The term shall not include any insurer in any State in any year in which such insurer does not participate in the Plan on a risk-bearing or potentially risk-bearing basis;

(m) "Person" includes any individual, group of individuals, corporation, partnership, association, or any other organized group of persons;

(n) "Placement facility" means the facility established under Plan to place or provide essential property insurance to persons making application for one or more lines of such insurance under the Plan;

(o) "Pool" means any pool or association of insurance companies in any State that is formed, associated, or otherwise created for the purposes of sharing risks and of making property insurance more readily available;

(p) "Property owner" or "owner," with respect to any real property, personal property, or mixed real and personal property, means any person having an insurable interest in such property;

(q) "Director" means the Director of the Federal Emergency Management Agency;

(r) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(s) "State insurance authority" means the person having legal responsibility for regulating the business of insurance within a State;

(t) "Surcharge" means (1) any condition charge, and (2) any general or other charge above the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market.

(u) "Urban area" includes any municipality or other political subdivision of a State, subject to population or other limitations defined in rules and regulations of the Director, and such additional areas as may be designated by the State insurance authority; and

(v) "Year" means a calendar year; fiscal year of a company, association, or pool; reinsurance contract year; or such other period of 12 months as may be designated by the Administrator.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13457, Feb. 29, 1980]

§ 55.2 Composition and supervision of FAIR Plan.

(a) The administrator will periodically review each State's FAIR Plan in its entirety for conformity to statutory criteria (12 U.S.C. 1749bbb-3—1749bbb-6) and this part. Although the number and location of the required elements in a Plan will vary according to the particular method and procedures used by the State, the required documentation comprising each Plan could include any or all of the following, as relevant:

(1) The State law, where one has been enacted;

(2) The industry agreement or program, if any;

(3) The approval action by the State insurance authority with respect to the industry agreement or program, or by court order or other approval authority, if applicable; and

(4) Implementing rules, regulations, and orders, together with operating procedures and forms.

(b) The Plan shall include a certification by the State insurance authority of the date on which the Plan was placed in effect and on which any amendments to the Plan are effective.

(c) The Plan shall evidence that it has been approved by, and is to be administered under the supervision of, the State insurance authority.

(d) The Plan shall provide for a continuing public education program by participating insurers, agents, and brokers, in order to assure that the Plan receives adequate public attention. For example, a brochure or other publication should be made widely available for distribution through all agents, brokers, and other producers. All participating insurers, agents, and brokers should include such a publication with each notice of cancellation or nonrenewal in order to provide policyholders with the required information concerning the placement of insurance under the Plan.

(e) At least one-third of the voting members of every board of directors, board of governors, advisory committee, and other governing or advisory board or committee for each Plan shall be individuals who are not employed by, or otherwise affiliated with, insurers, insurance agents, brokers, producers, or other entities of the insurance industry. These public members shall include neighborhood civic groups or associations, consumer groups or associations, city, county or other government planners, or other individuals or organizations who have interest in improving local conditions. The solicitation of these public members to represent the consumer and other community interests shall be conducted by persons or organizations independent of insurance industry affiliation.

(f) For the purpose of this section the boards and committees cited above are only those boards and committees which have expressed or delegated authority to make decisions affecting the operation of the FAIR Plan or affecting individual policyholders or applicants (i.e., governing committees, underwriting committees, claims committees, appeals committees, etc.). Compliance with this section shall mean:

(1) States with no state legislative prohibition to amending the composition of the FAIR Plan Board of Directors, Board of Governors, Advisory Committee and other governing or advisory board or committees have amended the governing instrument of such boards or committees so that the appointment of these public members is by the State Insurance Commission or Governor, not by the insurers.

(2) States with state legislative prohibition to amending the composition of the FAIR Plan Board of Directors, Board of Governors, Advisory Committee, and other governing or advisory board or committee should, pending passage of necessary state legislation, supplement the existing boards and committees with public advisors or consultants appointed by the state not by the insurers. This interim procedure will satisfy compliance for a period of time ending with the close of the first full regular session of the appropriate state legislative body following September 30, 1979.

(3) When the state insurance authority has determined that (1) or (2) above is not appropriate because of local conditions or state law the state insurance authority shall transmit to the Administrator an alternative plan of compliance, an explanation of the desirability of such alternative plan and a certification that the alternative plan is designed to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, as amended.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13457, Feb. 29, 1980]

§ 55.3 Coverage and operation of the Plan.

(a) At a minimum, the Plan shall provide for insurance against direct loss to property as defined and limited in standard fire policies and in (1) extended coverage, and (2) vandalism and malicious mischief endorsements thereon, as approved by the State insurance authority. It shall not include automobile insurance nor such types of manufacturing risks as may be excluded by the State insurance authority. The Plan shall specifically provide for insurance against direct loss to property that is being constructed or rehabilitated (including builder's risk coverage). To avoid the need for amendment to the Plan and delays in securing new approval action, the Plan should provide for the inclusion of such additional lines of property insurance as from time to time may be designated essential by the Administrator pursuant to section 1203(a)(2) of the Act, 12 U.S.C. 1749bbb-2(a)(2).

(b) The Plan shall specify its geographic area of coverage. If the entire State is not designated as the area of coverage, the Plan must specify—by name, by population size, or by class—the political subdivisions and other areas eligible under the Plan. The area of coverage may not be limited to communities that have a blighted or deteriorating area or an area approved by the Director for an urban renewal project.

(c) Each State insurance authority under whose jurisdiction a Plan has been put into operation shall keep the Administrator fully and currently informed of any modifications or changes in the organization or operation of the Plan in his State, whether or not such changes directly affect the availability of coverage under the Plan.

(d) No risk within the Plan shall be insured at a rate higher than the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market; except that this provision shall not be deemed to prohibit the application to any such risk, on a nondiscriminatory basis, of condition charges for substandard physical conditions within the control of the applicant for insurance as set by the principal State-licensed rating organization for the voluntary market.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13457, Feb. 29, 1980]

§ 55.4 Insurer participation and placement program.

(a) The Plan's placement program may take any of a variety of forms; for example, it may involve a syndicated or direct writing pool, an assigned risk facility, a reinsurance pool or association, or combinations of the foregoing. A placement program or amendments thereto not previously approved must be transmitted to the Administrator in accordance with the provisions of § 55.11(b).

(b) The Plan shall not discriminate against, shall provide for full cooperation with, and shall seek cooperation from all agents and brokers licensed to write property lines in the State. The inclusion of agents and brokers on FAIR Plan governing boards is encouraged.

(c) The Plan shall include one or more all-industry placement facilities, doing business with every insurer participating in the Plan, to perform the following functions for properties meeting reasonable underwriting standards:

(1) Upon request by or on behalf of a property owner requesting an inspection under the Plan, distribute the placement or risks equitably among the insurers with which it does business; and

(2) Place insurance up to the full insurable value of the risk to be insured with one or more insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability. In the case of very large risks not accommodated by the Plan (e.g., those whose full insurable value exceeds $1,500,000), the Plan shall provide that the placement facility shall assist in seeking to place the excess portion.

(d) As soon after October 1 of each year as practicable, each state insurance authority under whose jurisdiction a Plan has been put into operation shall notify the Administrator of the names of all insurers that are fully participating (on a risk-bearing basis) in the Plan of such State on that date in accordance with the conditions of the Standard Reinsurance Contract in effect at that time. For a Plan in which participation by insurers is voluntary, the notification shall include an estimate by the authority of the aggregate premium volume of essential property insurance written by participating insurers in relation to the total premium volume in such lines written by all property insurers in the State.

(e) Federal riot reinsurance will be offered only to those insurers that: (1) Have direct writings in one or more lines of essential property insurance and (2) are actually or potentially risk-bearing members of any pool organized under the Plan, as certified by the State insurance authority.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13457, Feb. 29, 1980]

§ 55.5 Inspections and applications for insurance.

(a) The Plan shall designate one or more inspection facilities, which may also operate as placement facilities if desirable.

(b) The Plan shall make its inspection and placement facilities readily available and accessible to the general public by providing a central source of information on the services it provides and on the procedures for application. To assure the public's access to such information, the telephone information number of the Plan shall be listed alphabetically as "FAIR Plan" (1) in the white sections and (2) under "Insurance" in the classified sections of the telephone directories of each city with a population over 100,000 where the Plan provides coverage and (3) the providing of an 800 number WATTS line is encouraged.

(c) The Plan shall require that there will be an inspection of any eligible risk that is submitted to a placement facility or to a servicing insurer if such facility or insurer is unwilling to write coverage at regular rates. The Plan may not require as a precondition for obtaining an inspection that the property owner make a showing or certification that he has been unable to obtain insurance in the regular market.

(d) The Plan shall provide that inspections may be requested by the property owner or his authorized representative, the insurer, or the insurance agent, broker, or other producer. The Plan shall also provide that the request for an inspection need not be in writing, although it can provide for the transcribing of the pertinent information on a form.

(e) An inspection under the Plan shall be without cost to the property owner. Payment of a deposit premium may not be required as a precondition to inspection. However, the Plan may allow a property owner, at his option, to pay a deposit or provisional premium at the time of application, rather than at the time insurance under a deemer or binder provision becomes effective.

(f) The Plan may not require the presence of the owner of the building for a tenant to obtain an inspection, but the inspection facility must be provided access to the relevant portions of the building in which the property to be insured is located.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13457, Feb. 29, 1980]

§ 55.6 Deemer or binder requirement.

(a) Each Plan shall contain either a deemer or a binder provision in order to prevent lapses of insurance coverage for risks eligible under the Plan before coverage has been provided or declined under the Plan. A Plan may contain both a deemer and a binder provision.

(b) Plans adopting a deemer provision shall provide that eligible risks are automatically deemed insured if: (1) Through no fault of the applicant, coverage has not been either offered or denied within 20 calendar days after the date the request for inspection was received, and (2) the applicant, at the time of requesting the inspection or at any time prior to the receipt of an inspection report indicating that the property is uninsurable, pays either the estimated annual premium or the portion thereof that is appropriate for the period of time for which the coverage is provided. The period of coverage provided under any such deemer provision shall not be less than the time required to complete the inspection and to process fully in the ordinary course of business any related application for insurance of the property submitted either directly to the placement facility or first to a designated insurer and thereafter to the placement facility if necessary.

(c) Plans adopting a binder provision shall provide that an applicant may apply for and obtain temporary coverage for a risk eligible under the Plan upon payment of a provisional premium at the time of requesting the inspection. The Plan, at its option, may also provide that coverage under the binder shall be extended for a sufficient period of time, after receipt of an unfavorable inspection report, to enable the applicant to bring the property up to insurable standards, but during the period of such rehabilitation reasonable condition surcharges may be added to the normal premium rates otherwise applicable to such property.

(d) Coverage provided under the deemer or binder provisions of the Plan shall be at the normal rates for the class of property to be insured, exclusive of any surcharge, but shall be subject to an appropriate premium adjustment, if necessary, after the property has been inspected.

(e) It is expected that no policyholder will be without coverage following a cancellation or nonrenewal under the Plan or otherwise, due solely to delays in inspecting and placing the risk under the Plan, and the Plan shall set forth the manner in which the objective of maximum possible continuity of coverage is to be accomplished. Binding coverage immediately, subject to inspection, would accomplish this and is encouraged.

§ 55.7 Placement action after inspection report.

(a) The placement facility or insurer to which a risk is referred by the inspection facility shall complete an action report and promptly notify the applicant of the following:

(1) The amount of coverage that it agrees to write; and, if the coverage is with a surcharge, the amount of such surcharges and the improvements needed for coverage at a lower surcharged rate and at an unsurcharged rate;

(2) The amount of coverage it agrees to write if specified improvements are made; or

(3) That it declines to write the coverage because the property does not meet reasonable underwriting standards, in which case it will also state the specific information from the inspection report and other sources that constitutes the basis for this determination.

(b) No surcharge shall be made on any risk unless it is based upon an appropriate, objective, and identifiable physical condition of the property, as disclosed by an inspection and specified in an inspection report, and is also a condition charge for substandard physical conditions within the control of the applicant for insurance as set by the principal State-licensed rating organization for the voluntary market. Such conditions, as disclosed by an inspection, along with the condition charges shall be specified in an inspection report transmitted to the applicant and no surcharge shall be made on the basis of environmental hazards.

(c) Reasonable underwriting standards for declination of risks must be relevant to the perils against which insurance is sought. For example, they may include:

(1) Physical condition of the property; however, the mere fact that a property does not satisfy all current building code specifications would not, in itself, suffice;

(2) The property's present use, such as extended vacancy or extended unoccupancy of the property for 60 consecutive days (other than for rehabilitation purposes) or the improper storage of flammable materials; or

(3) Other specific characteristics of ownership, condition, occupancy, or maintenance that are violative of law or public policy and that result in a substantially increased exposure to loss.

(4) Buildings in respect to which any two or more of the following conditions exists:

(i) "Failure to pay real estate taxes on the property after the taxes have been delinquent for one (1) year or more (real estate taxes shall not be deemed to be delinquent for this purpose even if they are due and constitute a lien, so long as a grace period remains under local law during which such taxes may be paid without penalty), or

(ii) Failure, within the insured's control, to furnish heat, water, or public lighting for 30 consecutive days or more, or

(iii) Failure within a reasonable time to correct conditions dangerous to life, health or safety.

(5) Buildings on which because of their physical condition there is an outstanding order to vacate, an outstanding demolition order or which

have been declared unsafe in accordance with applicable law.

(6) Rejection of a risk in respect to which one or more of the conditions set forth in § 55.9(a)(1) (i) through (ix) currently exists. The FAIR Plan will upon notice that conditions at the building(s) have changed, consider the acceptance of a new application for coverage.

(d) In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or that the coverage will be written on condition that the property be improved, the insurer or placement facility shall promptly send copies of the inspection and action reports to the applicant, advising him of the appeal procedures available, including rights of appeal to the State insurance authority under applicable State law. Appeal procedures within the Plan shall provide for prompt handling.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13457, Feb. 29, 1980]

§ 55.9 Notice of cancellation or nonrenewal.

(a) (1) Each Plan shall require its participating insurers to give, and each such insurer shall give, property owners no less than 30 days prior written notice of any cancellation or nonrenewal of coverage initiated by the insurer with respect to any eligible risk, whether or not such risk is then insured under the Plan, in order to allow the affected property owner sufficient time to apply for an inspection and to obtain coverage under the Plan if necessary, except that a shorter notice of not less than 5 days may be used if one of the following conditions exists in which event a policy may be cancelled subject to the policy conditions imposed by the state insurance authority:

(i) Owner or occupant incendiarism;

(ii) At least 65% of the rental units in the building are unoccupied, and the insured has not obtained prior approval from the FAIR Plan of a rehabilitation plan which necessitates a high degree of unoccupancy;

(iii) Fire damage exists and the insured has stated or such time has elapsed as clearly indicates that the damage will not be repaired;

(iv) Following a fire, permanent repairs following satisfactory adjustment of loss have not commenced within 60 days;

(v) Property has been abandoned or there has been removal of undamaged salvageable items from the building and the insured can give no reasonable explanation for such removal;

(vi) Utilities such as electric, gas, or water services have been disconnected and the insured has failed to pay his account for such services within 120 days, or real estate taxes have not been paid for a two year period after the taxes have become delinquent (real estate taxes shall not be deemed to be delinquent for this purpose even if they are due and constitute a lien, so long as a grace period remains under local law during which such taxes may be paid without penalty);

(vii) Where reliable information that good cause exists to believe that the building will be burned for the purpose of collecting the insurance on the property;

(viii) Conviction or unresolved indictment of a named insured or loss payee or any other person having a financial interest in the property of the crime of arson or a crime involving a purpose to defraud an insurance company;

(ix) Where the building has been subject to more than two (2) fires, each loss amounting to at least $500 or one percent of the insurance in force, whichever is greater, in any 12-month period; or more than three (3) such fires in any 24-month period, provided that the cause of such fires is due to conditions which are the responsibility of the owner-named insured;

(x) Material misrepresentation;

(xi) Non-payment of premium.

(2) Any cancellation upon less than thirty days notice arising out of any of the conditions listed in paragraph (a)(1) of this section shall follow a procedure which includes as a minimum, the following:

(i) The designation of a responsible official by the state insurance authority to serve as the point of contact with the FAIR Plan.

(ii) The notification either in writing or by phone to the official by the FAIR Plan of any such cancellation. The state insurance authority shall maintain a record of all such cancellations.

(iii) The notification to the insured by the FAIR Plan of the cancellation, giving the reasons for the action and setting forth the insured's prerogative to appeal to the state insurance authority for review of the cancellations. The cancellation shall stand unless the state insurance authority rules otherwise.

[36 FR 24751, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 13547, Feb. 29, 1980]

§ 55.10 Impartial selection of adjusters.

(a) No Plan or placement facility shall discriminate by providing for the primary use of services or any preferential treatment of any adjuster to the exclusion, detriment, or disadvantage of any other adjuster of equal or equivalent professional qualifications in any formal or informal arrangements made or promulgated for the adjustment of any insured losses under policies or contracts of insurance issued under the Plan.

(b) This § 55.10 shall not be construed to prohibit (1) the use by servicing insurers of their adjusting staffs, (2) the impartial appointment of a supervisory adjuster with respect to any individual loss directly insured by three or more insurers, or (3) the obtaining of qualified loss adjusters at the lowest administrative cost for a reasonable period of time by FAIR Plans through the adoption of an impartial and periodic public bidding procedure.

§ 55.11 Coding and reports under the Plan.

(a) The Plan shall provide for the separate coding of policies written pursuant to the Plan.

(b) The Plan shall provide for the submitting to the State insurance authority and the Administrator of periodic reports setting forth the number of requests for inspection, the number of risks inspected, and the results of referrals by the facility, including by individual insurer the number of risks accepted, the number of risks conditionally accepted and reinspections made, the number of risks declined, and such other information as the State insurance authority or the Administrator may from time to time require.

(c) Not later than 90 days after the close of its fiscal year, each placement facility under the Plan shall furnish to the Administrator a comprehensive report on its operations during the year, which at the minimum shall include such information for the year as may be called for on Form HUD-1603, Quarterly State FAIR Plan Report. The first such report shall include copies of all previously published annual and interim reports not already furnished to the Administrator. Subsequent reports shall include any additional printed or published report under the Plan.

(d) For periods beginning on and after January 1, 1970, each placement facility under the Plan shall also provide the Administrator with quarter-annual reports of its current operations on Form HUD-1603, which the Administrator shall furnish to the facility. Such reports shall be due not later than 90 days after the end of each quarter. With respect to any previous quarter for which the reports required by this paragraph have not already been furnished, reports shall be due not later than 90 days after the effective date of this § 55.11.

§ 55.12 Plan Evaluation and Waiver of Regulations.

(a) When the Plan's program involves either:

(1) A Plan not previously approved by the Administrator; or

(2) A Plan in a State which has no State-licensed rating organization; or

(3) A Plan in a State in which the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market are not reflective of the indicated rates based on the voluntary insurance market experience; the state insurance authority shall transmit to the Administrator:

(i) A copy of the Program; and

(ii) An explanation of the Program; and

(iii) A certification that the Program is designed to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, as amended.

(b) The Administrator may waive compliance with any requirement of this part with respect to any State, temporarily or indefinitely, and in whole or in part, if the state insurance authority certifies that compliance is unnecessary or inadvisable under local conditions or State law and the Administrator concurs in such certifications.

[45 FR 13457, Feb. 29, 1980]

§ 55.13 Notice to policyholders.

(a) Each participating or cooperating insurer offering insurance pursuant to this program (12 U.S.C. 1749bbb-1749bbb-21) shall provide a notice to all FAIR Plan policyholders with all new or renewal policies mailed on and after April 15, 1977, containing the following information:

(1) Authority for issuance of policy;

(2) FAIR Plan name, address, and telephone numbers;

(3) State Insurance Department addresses and telephone numbers.

(b) Compliance with the requirements of paragraph (a) of this section will be satisfied provided the participating or cooperating insurer complies with a format of notice as designated by the Federal Insurance Administrator; such notices shall, as a minimum, include the following information employing the same terms or substantially similar terms.

Dear Policyholder: The attached FAIR Plan Insurance Policy, or renewal thereof, has been issued to you by the FAIR Plan in cooperation with your State Insurance Authority and the Federal Insurance Administration of the Federal Emergency Management Agency. The policy is serviced generally by the statewide FAIR Plan, as listed at the end of this Notice. The FAIR Plan or your insurance agent will assist you if you need to report a loss or if you have any questions pertaining to the premium charged or the scope of the coverage afforded under the policy. In addition, your State Insurance Department which has regulatory authority over the FAIR Plan is ready to be of assistance to you in these matters, if the FAIR Plan or agent cannot help you. Moreover, since the FAIR Plan Program is intended to provide you with the highest caliber of service, your State Insurance Department would welcome any suggestions you may have for improving the program. Please do not hesitate to write, for assistance, to:

(1) FAIR Plan: (Name, Address, Telephone Number).

(2) State Insurance Department (Name, Address, Telephone Number).

[42 FR 3163, Jan. 17, 1977. Redesignated at 44 FR 31177, May 31, 1979]

PART 56—STANDARD REINSURANCE CONTRACT

Sec.

56.20 Statement of applicable law.
56.21 Definitions.
56.22 Offer to provide reinsurance.
56.23 Effective date of offer.
56.24 Acceptance of offer.
56.25 Policies reinsured.
56.26 Premiums.
56.27 Assessments.
56.28 Claims.
56.29 Inception and expiration dates.
56.30 Cancellations.
56.31 Adjustments.
56.32 Insolvency.
56.33 Errors and omissions.
56.34 Restriction of benefits.
56.35 Participation in statewide plans.
56.36 Limitations on reinsurance.
56.37 Arbitration.
56.38 Access to books and records.
56.39 Information and annual statements.
56.40 Notice of offer of reinsurance.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17. Sec.'s delegation of authority, 34 FR 2680, Feb. 27, 1969; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 36 FR 25754, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 56.20 Statement of applicable law.

Title XII of the National Housing Act (hereinafter referred to as the Act), added by the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb—1749bbb-21, provides for a National Insurance Development Program. Pursuant to this title, the Director of the Federal Emergency Management Agency is authorized to offer to any insurer reinsurance against losses resulting form riots or civil disorders, in all standard lines of property insurance enumerated under subparagraphs (A) through (E) of section 1203(a)(13) of the Act taken together, and, with respect to any State in which such reinsurance is purchased, to offer reinsurance individually on the standard lines of property insurance enumerated under subparagraphs (F) through (J) of said section. Principal eligibility requirements under the Act for such reinsurance are set forth in § 56.35.

§ 56.21 Definitions.

As used in this part:

(a) "Aggregate losses" means the sum total of losses resulting from riots or civil disorders occurring in a State and allocable to a State in which reinsurance is provided;

(b) "Civil disorder" means:

(1) Any pattern of unlawful incidents taking place within close proximity as to time and place and involving property damage intentionally caused by persons apparently having civil disruption, civil disobedience, or civil protest as a primary motivation, at least two of which incidents result in property damage in excess of $1,000 each; or

(2) Any occurrence of property damage in excess of $2,000 caused by persons whose unlawful conduct in causing the occurrence clearly manifests their primary purpose of civil disruption, civil disobedence, or civil protest;

(c) "Company" means any company authorized to engage in the insurance business under the laws of any State, except that if there are two or more companies within a State in which reinsurance is to be provided under the contract which as determined by the reinsurer:

(1) Are under common ownership and ordinarily operate on a group basis; or

(2) Are under single management direction; or

(3) Are otherwise determined by the reinsurer to have substantially common or interrelated ownership, direction, management, or control; then all such related, associated, or affiliated companies, excluding nonadmitted companies which are not specifically included by endorsement to the contract, shall be reinsured only as one aggregate entity;

(d) "Continuing organization, pool, or association of insurers" means an industry pool created to provide direct insurance to meet special problems of insurability, such as for a particular class or type of business;

(e) "Contract" means the Standard Reinsurance Contract;

(f) "Direct premiums earned" means direct premiums earned as reported in column 2 on page 14 of the company's Fire and Casuality Annual Statement for the specified calendar year, in the form adopted by the National Association of Insurance Commissioners, subject to (1) adjustment as approved by the reinsurer for cessions to pools, facilities, and associations, and for the inclusion of participations in such pools, facilities, and associations, and (2) such other appropriate adjustments as may be approved or required by the reinsurer, which shall include adjustments for dividends paid or credited to policyholders and reported in column 3 on page 14, subject to a maximum credit of 20 per centum of direct premiums earned for any one line of insurance;

(g) "Excess aggregate losses" means that part of aggregate losses which is equal to the sum of—

(1) 90 percent of the company's aggregate losses in excess of its net retention until the company's 10-percent share of aggregate losses under this paragraph (g)(1) equals the amount of its net retention;

(2) 95 percent of the company's remaining aggregate losses (after deducting the reinsurer's share of aggregate losses under paragraph (g)(1) of this section) in excess of twice its net retention, until the company's 5-percent share of aggregate losses under this paragraph (g)(2) equals the amount of its net retention; and

(3) 98 percent of the company's remaining aggregate losses (after deducting the reinsurer's share of aggregate losses under paragraphs (g)(1) and (2) of this section) in excess of an amount equal to three times its net retention;

(h) "Losses" means all claims proved, approved, and paid by the company under reinsured policies, resulting from riots or civil disorders occurring in a State during the period of the contract, after making proper deduction for salvage and for recoveries other than reinsurance together with an allowance for expense in connection therewith, hereby agreed to equal an amount per claim of eight per centum (8%) of the first $25,000 of any such claim, plus three per centum (3%) of the amount by which such claim exceeds $25,000 but is less than $100,000, plus one per centum (1%) of the amount by which the claim exceeds $100,000; it does not mean any claim excluded under the contract.

(i) "Net retention" means the amount of aggregate losses that the company must stand before the reinsurer's liability attaches under the contract and shall be one aggregate figure for each State which shall be the larger of either $1,000 or the amount determined by applying a factor of two and one-half per centum (2½%) to the specified percentage of the company's direct premiums earned in the State for the calendar year in which the annual contract period commences on those lines of insurance reinsured;

(j) "Property owner" means any individual or group of individuals, corporation, partnership, or association, or any other organized groups of persons having an insurable interest in any real, personal, or mixed real and personal property;

(k) "Reinsurer" means the Federal Insurance Administrator;

(l) "Riot" means any tumultuous disturbance of the public peace by three or more persons mutually assisting one another, or otherwise acting in concert, in the execution of a common purpose by the unlawful use of force and violence resulting in property damage of any kind;

(m) "Specified percentage" means one hundred per centum (100%) of the direct premiums earned for each line of insurance reinsured under the contract, except that the specified percentage of Homeowners multiple peril shall be eighty-five per centum (85%) and that of Commercial multiple peril shall be sixty-five per centum (65%);

(n) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands; and

(o) "State pool" means any State Fair Plan pool or other insurance placement facility which is intended to meet the requirements of Part A of the Urban Property Protection and Reinsurance Act of 1968 (82 Stat. 558, 84 Stat. 1791, 12 U.S.C. 1749bbb-3—1749bbb-6a);

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8379, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.22 Offer to provide reinsurance.

Pursuant to the provisions of the Urban Property Protection and Reinsurance Act of 1968, and subject to the terms and conditions set forth in this part and in the contracts offered pursuant to this part, the reinsurer shall offer annually to enter into a contract to pay, as reinsurance of any eligible company, the amount of the company's excess aggregate losses resulting from riots or civil disorders in such lines of mandatory and optional coverage as may be designated by the company separately for each State.

[37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.23 Effective date of offer.

The reinsurer's offer to provide reinsurance under the terms and conditions set forth in this part shall be effective upon publication in the FEDERAL REGISTER of the notice of offer to provide reinsurance required pursuant to § 56.40.

[37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.24 Acceptance of offer.

Acceptance of the reinsurer's offer shall be in the manner specified in the notice of offer to provide reinsurance which is published in the FEDERAL REGISTER pursuant to § 56.40.

[37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.25 Policies reinsured.

(a) Reinsurance, under a Standard Reinsurance Contract provided pursuant to this part, shall apply to:

(1) All policies or contracts of direct property insurance issued by the company to any property owner, except for policies for which the business is handled for or through any State pool or any other continuing organization, pool, or association of insurers, and

(2) The company's participations in State pools and, as may be approved by the reinsurer, in other continuing organizations, pools, or associations of insurers,

which policies, contracts, or participations are in force on the effective date of the contract or which commence or are renewed on or after such effective date in all the mandatory and in such optional standard lines of property insurance listed under paragraphs (b) and (c) of this section as may be designated separately for each State.

(b) The lines of mandatory coverage are:

(1) Fire and extended coverage;

(2) Vandalism and malicious mischief;

(3) Other allied lines of fire insurance;

(4) Burglary and theft; and

(5) Those portions of multiple peril policies covering similar perils to those provided in paragraphs (b) (1), (2), (3), and (4) of this section.

(c) The lines of optional coverage are:

(1) Inland marine;

(2) Glass;

(3) Boiler and machinery;

(4) Ocean marine; and

(5) Aircraft physical damage.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.26 Premiums.

(a) The aggregate basic premium due the reinsurer for the reinsurance coverage provided under the contract shall be computed by applying the percentage rate determined by the reinsurer in accordance with the requirements of the Act and specified in the contract to an aggregate premium base consisting of the sum of the products of a reinsured company's direct premiums earned in each State in each reinsured line for the calendar year in which the annual contract period commences, multiplied by the specified percentage of such earned premiums, as defined in § 56.21 (f) and (m).

(b) The contract may also provide for an additional premium which shall be due the reinsurer in such amounts and under such conditions as are specified in the contract: *Provided*, That an additional premium payment or payments shall only be required if the total amount of all excess aggregate losses paid by the reinsurer under all contracts for the contract period exceeds the total amount of all aggregate basic premiums paid or payable to the reinsurer under all contracts for that period.

(c) An advance premium, which shall be an estimated premium only, shall be computed by each reinsured company on the basis of its direct premiums earned in the calendar year preceding the calendar year in which the annual contract period commences, in the manner required for the computation of the aggregate basic premium. If any line of insurance is added during the term of the contract for which a reinsured company had no premium writings in the calendar year preceding the calendar year in which the annual contract period commences, the premium base for the advance premium shall be estimated by State for the period from the date of attachment of coverage to the expiration date of the contract. In no event shall the advance premium be less than $25 for each State in which reinsurance is provided under the contract. The advance premium shall be paid to the reinsurer without demand within 30 days from the effective date of coverage. The actual amount of the aggregate basic premium shall subsequently be computed and adjusted in accordance with the provisions of this section and § 56.31.

(d) If the contract requires payment of an additional premium, the reinsurer shall have the option of requiring payment of the additional premiums as an additional advance premium on an estimated basis: *Provided*, That an estimated additional premium payment or payments may only be required if the total amount of all excess aggregate losses paid by the reinsurer under all contracts for the contract period exceeds the total amount of all advance premiums collected by the reinsurer under all contracts for that period. If payment of an additional premium on an estimated basis is required under the contract, the actual amount of the additional premium shall subsequently be computed and adjusted in accordance with the provisions of this section and § 56.31.

(e) With the exception of the advance premium which is due without demand of the reinsurer within 30 days from the effective date of coverage, premium amounts shall be due 30 days after the demand of the reinsurer. Interest shall accrue at six per centum (6%) per annum on any portion of any premium amount which is not received on or before 30 days from its due date.

(f) The aggregate basic premium, together with any additional premium which may be due the reinsurer in accordance with the preceding paragraphs, shall constitute the minimum reinsurance premium payable for coverage under the contract; and such reinsurance premium shall be deemed fully earned on the date that such reinsurance coverage attaches, except as otherwise provided in § 56.30.

[37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.27 Assessments.

If any company (or companies) reinsured by the reinsurer under a Standard Reinsurance Contract incurs aggregate losses in reinsured lines in any State during the period of the contract, which in total exceed its net retention for all such lines and as a result lodges claims against the reinsurer, then each reinsured company, on demand of the reinsurer, shall pay to the reinsurer an assessment sufficient to meet the company's equitable share of all such excess aggregate losses incurred in the State, but only to the extent that such losses exceed the unused net amount of all reinsurance premiums paid or payable by all reinsured companies into the National Insurance Development Fund for the period from August 1, 1968, through April 30 of the calendar year during which the annual contract period expires (including interest earned thereon), for reinsurance in such State. Such share shall be in the proportion that—

(a) The amount, if any, by which the company's net retention in lines reinsured under the contract in such State exceeds the company's aggregate losses in such lines, bears to

(b) The aggregate amount of unabsorbed net retention for all the lines of insurance of all companies reinsured under the contract in such State,

but such share shall not exceed the amount of the company's unabsorbed net retention under paragraph (a) of this section. An assessment will be required only after the termination of coverage provided by the contract.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.28 Claims.

(a) Each reinsured company shall advise the reinsurer by letter: (1) Of all losses from a single occurrence which exceed $50,000, and (2) whenever it appears that aggregate losses have been incurred in an amount equal to ninety per centum (90%) of the company's net retention in any State, on the basis of its direct premiums earned and reported to the reinsurer for the calendar year preceding the calendar year in which the annual contract period commences.

(b) When the company incurs aggregate losses which exceed its net retention in any State, the company may make claim upon the reinsurer for the payment of excess aggregate losses in that State by filing a certification of loss and thereafter such supporting documentation of such losses as may be required by the reinsurer, and following the receipt of such certifications and documentation the reinsurer shall, as promptly as possible, in such installments and on such conditions as may be determined by the reinsurer to be appropriate (including advance payments made on the basis of preliminary certifications of loss filed in advance of the final determination of the ultimate amount of losses paid), pay to the company the amount of such excess aggregate losses subject to adjustments on account of underpayments or overpayments.

(c) If the ultimate amount of losses to be paid by the company has not been finally determined when the certification of loss is filed, the company shall, in due course, file one or more supplementary certifications of loss and thereafter the reinsurer or the company, as the case may be, shall pay the balance due.

(d) Claims paid pursuant to computations of net retentions based upon the direct premiums earned for the calendar year preceding the calendar year in which the annual contract period commences shall be recomputed and adjusted at the termination of the coverage provided by the contract on the basis of direct premiums earned in reinsured lines for the calendar year in which the annual contract period commences.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.29 Inception and expiration dates.

(a) Provided a company has requested coverage by States and lines of coverage in the manner specified in the notice of offer published pursuant to § 56.40, on or before April 30 of any year, the contract shall be in effect from 12:01 a.m., e.s.t., on May 1 of that year, and shall expire at 12 p.m. (midnight), e.s.t., on the following April 30, unless sooner terminated.

(b) If a company applies for coverage on or after May 1 of any year, the contract shall be effective from 12:01 a.m., e.s.t., on the day after such application is dispatched, as determined by the date of postmark or telegram, provided the company requests coverage by State and line and otherwise complies with the eligibility requirements of the contract.

(c) The contract applies only to losses occurring during the term of the contract as follows:

(1) If at the inception of the contract any riot or civil disorder is in progress, no coverage shall be provided for losses resulting therefrom unless the contract is a continuation of coverage from the previous year's contract.

(2) If the contract terminates while a riot or civil disorder is in progress, no coverage shall be provided for any losses resulting therefrom which occur after the date and time of termination of the contract.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8380, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.30 Cancellations.

(a) Reinsurance under the contract may be canceled by the company in its entirety or with respect to any State upon written notice by the company to the reinsurer stating that it desires to cancel the reinsurance coverage specified and that it will pay any premium due the reinsurer in accordance with the provisions of the contract, subject to any adjustments which may be required under § 56.31: *Provided, however,* That no coverage shall attach under the contract if the company has willfully concealed or misrepresented any material fact with respect thereto.

(b) Reinsurance under the contract may be canceled by the reinsurer in its entirety or with respect to any State upon 30 days written notice to the company of such cancellation, stating the reasons for cancellation, which shall be limited to one or more of the following grounds: Fraud or misrepresentation subsequent to the inception of the contract, nonpayment of premium or any other amount due the reinsurer, and the grounds set forth in paragraph (b) of § 56.36.

(c) Whenever the reinsurer determines, in his discretion, that any cancellation of reinsurance is involuntary and without fault on the part of the company, the premium due the reinsurer for the coverage afforded under the contract shall be prorated in the ratio of—

(1) The number of days for which coverage was provided prior to the cancellation of such coverage plus 30, to

(2) The total number of days of coverage provided under the contract from the inception of such coverage up to and including April 30 of the cal-

endar year in which the annual contract period expires.

(d) In the event of any cancellation of reinsurance coverage under this § 56.30, the net retention and assessment of such company shall be computed, without proration, on the basis of the direct premiums earned for the calendar year during which the annual contract period commenced. Refunds of premiums, if any, due a company upon cancellation may, at the discretion of the reinsurer, be deferred until after final adjustments have been made in accordance with the provisions of § 56.31.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8381, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.31 Adjustments.

(a) Each reinsured company shall report to the reinsurer within 60 days after request its direct premiums earned for the calendar year in which the annual contract period commenced in all reinsured lines in all States for which reinsurance was provided under the contract, for the purpose of computing and adjusting the reinsurance premium due to the reinsurer with respect to the coverage provided. The direct premiums earned to be reported for any line of insurance added during the contract term for any State in which a company had no premium writings in such line in the calendar year in which the annual contract period commenced shall be the direct premiums earned for the first 4 months of the calendar year in which the annual contract period expires, as estimated by the company, subject to audit by the reinsurer.

(b) In no event shall the adjusted amount of direct premiums earned by the company result in a basic premium to the reinsurer in an amount less than $25 for each State during the contract year, which shall constitute the minimum adjusted reinsurance premium for any State under the contract.

(c) On or before July 31 of the calendar year in which the annual contract period expires, or such later date as may be permitted at the option of the reinsurer, each reinsured company shall report to the reinsurer its aggregate losses.

(d) Any overpayment or underpayment between the reinsurer and the company shall be adjusted and paid in accordance with the obligations assumed under the contract.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8381, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.32 Insolvency.

(a) In the event of insolvency of the company the reinsurance under the contract shall be payable by the reinsurer to the company or to its liquidator, receiver, or statutory successor on the basis of the liability of the company under all policies, contracts, or participation shares reinsured without diminution because of the insolvency of the company.

(b) It is further agreed that the liquidator, or receiver, or statutory successor of the company shall give written notice to the reinsurer of the pendency of any claim against the company on the policies, contracts, or participation shares reinsured within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim the reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which may be deemed available to the company or its liquidator, receiver, or statutory successor. The expense thus incurred by the reinsurer shall be chargeable, subject to court approval, against the company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the company solely as a result of the defense undertaken by the reinsurer.

§ 56.33 Errors and omissions.

Inadvertent delays, errors, or omissions made in connection with any transaction under the contract shall not relieve either party from any liability which would have attached had such delay, error, or omission not occurred, provided always that such delay, error, or omission is rectified as soon as possible after discovery.

§ 56.34 Restriction of benefits.

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit.

§ 56.35 Participation in statewide plans.

(a) No reinsurance shall be offered or effective under the contract in any State unless there is in effect in such State, on the date coverage commences, a continuing statewide plan to make essential property insurance more widely available, and the company is fully participating in such plan on a risk-bearing basis and is certified by the State insurance authority as meeting the requirements of this § 56.35. Except with respect to its runoff business after ceasing to do business within a State, the company shall not be eligible for reinsurance under the contract in any State in which it is not engaged in the direct writing of property insurance at the time coverage is requested, or in which it is writing business on a nonadmitted basis, unless it reports such nonadmitted business to the State insurance authority and participates in the statewide plan of such State on the basis of such reported business. The company shall file and maintain with the State insurance authority in each State in which it is participating in the statewide plan a statement pledging its full participation and cooperation in carrying out the plan and shall file a copy of each such statement with the reinsurer. The company shall not direct any agent, broker, or other producer not to solicit business through such plans and shall not penalize in any way any agent, broker, or other producer for submitting applications for insurance under such plans. The company shall also establish and carry out an education and public information program to encourage agents, brokers, and other producers to utilize the programs and facilities available under such statewide plans.

(b) In the event that the company after the inception of the contract voluntarily withdraws from any State plan, pool, or other facility required by the provisions of this section, such withdrawal shall be deemed to constitute cancellation by the company with respect to that State as of the effective date of the withdrawal.

§ 56.36 Limitations on reinsurance.

(a) Reinsurance hereunder shall not be applicable to insurance policies subsequently written in a State by the company after the close of the second full regular session of the appropriate State legislative body following August 1, 1968, if the State has not enacted legislation to reimburse the reinsurer, as necessary, for the portion of the aggregate losses specified in section 1223(a)(1) of the National Housing Act (12 U.S.C. 1749bbb-9(a)), paid by the reinsurer under the contract.

(b) The reinsurer shall cancel coverage, in accordance with the provisions of the contract, with respect to any State in which—

(1) The reinsurer has found (after consultation with the State insurance authority) that: (i) It is necessary to have a suitable program adopted, in addition to required statewide plans, to make essential property insurance available without regard to environmental hazards and that such a program has not been adopted, or (ii) the company is not fully participating in the statewide plan; and, where it exists, in a State pool or other facility; and, where it exists, in any other program found necessary to make essential property insurance more readily available in the State; or

(2) Following a merger, acquisition, consolidation, or reorganization involving the company and one or more insurers with or without such reinsurance, the surviving insurer does not meet all criteria of eligibility for reinsurance and within 10 days pay any reinsurance premiums due; or

(3) The reinsurer has found (after consultation with the State insurance authority) that a statewide plan is not complying with the reinsurer's statutory or regulatory criteria or has become inoperative.

(c) Notwithstanding the foregoing provisions, reinsurance may at the election of the company be continued, up to and including April 30 of the calendar year in which the contract term expires, for the term of such policies and contracts reinsured prior to the date of termination of reinsurance under this § 56.36, provided the company pays the reinsurance premiums in such amounts as may be required. For the purposes of this § 56.36, the renewal, extension, modification, or other change in a policy or contract for which any additional premium is charged, shall be deemed to be a policy or contract written on the date such change was made.

(d) Reinsurance under the contract shall be subject to all of the provisions of the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb-1749bbb-21, and to all regulations duly promulgated by the reinsurer pursuant thereto prior to the inception of any particular coverage provided under the contract.

[36 FR 24754, Dec. 22, 1971, as amended at 37 FR 8381, Apr. 26, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 56.37 Arbitration.

(a) If any misunderstanding or dispute arises between the company and the reinsurer with reference to the amount of premium due, the amount of loss, or to any other factual issue under any provision of the contract, other than as to legal liability or interpretation of law, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding only upon approval by the reinsurer. The company and the reinsurer may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make his determination. If the company and the reinsurer cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the company and one by the reinsurer.

(b) The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the reinsurer. The company and the reinsurer shall bear equally all expenses of the arbitration.

(c) Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this § 56.37, shall, upon objection by the reinsurer or the company, be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

§ 56.38 Access to books and records.

The reinsurer and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books, documents, papers, and records of the company that are pertinent to the business reinsured under the contract. Such audits shall be conducted to the maximum extent feasible in cooperation with the State insurance authorities and through the use of their examining facilities. The company shall keep records which fully disclose all matters pertinent to the business reinsured, including premiums and claims paid or payable under the contract. Records relating to premiums shall be retained and available for three (3) years after final adjustment of premiums, and to reinsurance claims three (3) years after final adjustment of such claims.

§ 56.39 Information and annual statements.

The company shall furnish to the reinsurer such summaries and analyses of information in its records as may be necessary to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb-1749bbb-21, in such form as the reinsurer, in cooperation with the State insurance authority, shall prescribe; and the company shall file with the reinsurer a true and correct copy of the company's Fire and Casualty Annual Statement, or amendment thereof, as filed with the State insurance authority of the company's domicillary State, at the time it files such statement or amendment with the State insurance authority. The company shall also file with the reinsurer an equivalent of page 14 of such annual statement for each State in which reinsurance is provided under the contract.

§ 56.40 Notice of offer of reinsurance.

(a) Commencing with the Standard Reinsurance Contract for the May 1, 1972, to April 30, 1973, contract year, Federal reinsurance against riots or civil disorders shall be offered to eligible insurance companies by publication in the FEDERAL REGISTER of a notice of offer to provide reinsurance against riots or civil disorders. The notice of offer shall include an offer to provide reinsurance, a statement of the method by which the offer may be accepted, and the terms and conditions of the Standard Reinsurance Contract being offered.

(b) Copies of the terms and conditions of the Standard Reinsurance Contract offered in the notice of offer shall be maintained for public inspection at the office of the Federal Insurance Administrator, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472, during regular business hours and may be obtained by writing to the Administrator at the above address.

(c) Notwithstanding any provision of any other section in this part, the terms and conditions of any Standard Reinsurance Contract shall govern with respect to that contract if the contract has been offered in the manner provided in paragraph (a) of this section.

[37 FR 6186, Mar. 25, 1972. Redesignated at 44 FR 31177, May 31, 1979]

PART 57—STATE REIMBURSEMENT REQUIREMENT

Sec.
57.1 State reimbursement requirement in general.
57.2 Amount of State share.
57.3 Timing of State legislation.
57.4 Source of State share.
57.5 Timing of State payments.
57.6 Effect of failure to enact State legislation.
57.7 Notification of enactment.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 36 FR 24758, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 57.1 State reimbursement requirement in general.

(a) Section 1223(a)(1) of the National Housing Act (12 U.S.C. 1749bbb-9), added by the Urban Property Protection and Reinsurance Act of 1968, hereinafter referred to as the "Act," prohibits the Director of the Federal Emergency Management Agency from offering riot loss reinsurance with respect to any line of insurance in a State which does not by the close of the second full regular session of the appropriate State legislative body following August 1, 1968, adopt legislation, retroactive to August 1, 1968, which enables it to reimburse him annually (to the extent necessary) for a portion of the claims he pays in connection with excessive losses which may occur in that State with respect to the line of insurance reinsured. While in many States no actual payment may be required, legislation providing for such payment, if needed, is required for the continued provision of Federal riot loss reinsurance.

(b) The minimum lines of insurance for which State reimbursement legislation is required as a condition of continued Federal reinsurance for any line are: (1) Fire and extended coverage, (2) vandalism and malicious mischief, (3) other allied lines of fire insurance, (4) burglary and theft, and (5) those portions of multiple peril policies covering similar perils to those provided in paragraphs (b) (1), (2), (3), and (4) of this section. Optional lines of insurance for which State reimbursement legislation may be enacted on either a group basis or an individual basis are inland marine, glass, boiler and machinery, ocean marine, and aircraft physical damage. But no line of insurance will be eligible for Federal reinsurance in any State after the specified date unless it is included, either explicitly or implicitly, within the State reimbursement legislation.

§ 57.2 Amount of State share.

(a) The actual State share is limited to the amount by which the Director's total reinsured losses in the State during the current year exceed the total reinsurance premiums received for the same year, and such State share is reduced by (1) any excess of net reinsurance premiums over reinsured losses realized from business in that State since the year for which reimbursement was last required, and (2) any assessments of reinsured companies made under the Federal Standard Reinsurance Contract with respect to the current year.

(b) The maximum State share in any 1 year is an amount equal to 5 percent of the aggregate or total property insurance premiums earned in the State during the calendar year immediately preceding the end of the reinsurance contract year on all lines of insurance for which any reinsurance is provided by the Director in the State during the contract year, regardless of the number of companies actually purchasing Federal reinsurance.

§ 57.3 Timing of State legislation.

To enable companies doing business within a State to continue to participate in the Federal reinsurance program, the State must enact the necessary reimbursement legislation by the close of the second full regular session of the appropriate State legislative body after August 1, 1968, when the Federal Act became law.

§ 57.4 Source of State share.

Funds for the State share may be raised in any constitutional manner consistent with the intent of the Federal Act to place appropriate responsibility upon the State to share in property insurance losses resulting from riots or civil disorders. The Federal Act provides that the Director is to be reimbursed by the State, its political subdivisions, or a governmental corporation or fund established pursuant to State law. Thus, the State share should be financed out of general revenues or in some other manner which broadly distributes the burden of property insurance losses resulting from riots or civil disorders.

§ 57.5 Timing of State payments.

It is not required that funds for the State share be made available in advance of the year in which the losses occur. However, the State legislation must provide for a method of financing the State share which will assure timely reimbursement of the Director. It is anticipated that notification by the Director as to the amount of the State share due with respect to losses in any given year will not be made until the third quarter of the succeeding year. The State payment will be due and payable approximately 60 to 90 days thereafter.

§ 57.6 Effect of failure to enact State legislation.

If appropriate legislation is not enacted in a given State within the time specified, no Federal reinsurance may thereafter be offered or made applicable to insurance policies written in that State until such legislation is enacted. However, Federal reinsurance on insurance policies written prior to the specified date for the enactment of the State reimbursement legislation may be continued for the remainder of the current Federal contract year, which ends on April 30.

§ 57.7 Notification of enactment.

In order to prevent unnecessary lapses in Federal reinsurance coverage, each State insurance authority is requested promptly to notify the Federal Insurance Administrator, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472, of the date on which the State's reimbursement legislation is effective and to provide him with a copy of the enacted legislation.

PART 58—[RESERVED]

NATIONAL FLOOD INSURANCE PROGRAM

PART 59—GENERAL PROVISIONS

Subpart A—General

Sec.
59.1 Definitions.
59.2 Description of program.

Sec.
59.3 Emergency program.
59.4 References.

Subpart B—Eligibility Requirements

59.21 Purpose of subpart.
59.22 Prerequisites for the sale of flood insurance.
59.23 Priorities for the sale of flood insurance under the regular program.
59.24 Suspension of community eligibility.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

SOURCE: 41 FR 46968, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 59.1 Definitions.

As used in this subchapter—

"Accounting period" means any annual period during which the Agreement is in effect. Each accounting period under the Agreement applies separately to all policies issued under the Program during the time period.

"Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

"Actuarial rates"—see "risk premium rates."

"Administrator" means the Federal Insurance Administrator, to whom the Director has delegated the administration of the Program (34 FR 2680-81, February 27, 1969, as amended 39 FR 2787, January 24, 1974).

"Affiliates" means two or more associated business concerns which are or can be directly or indirectly controlled by one or more of the affiliates or by a third party.

"Agency" means the Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

"Agreement" means the contract entered into for the term of any accounting period by and between the Administrator and the Association whereby the Association or its subcontractors will sell policies of flood insurance under the Program within areas designated by the Administrator and will adjust and pay claims for losses arising under such policies. The Agreement is renewed automatically with respect to each subsequent accounting period unless either the Administrator or the Association gives the other written notice of intention to terminate on or before January 31 of the then current accounting period.

"Applicant" means a community which indicates a desire to participate in the Program.

"Appurtenant Structure" means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of shallow flooding" means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

"Area of special flood hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, AI-99, VO, or VI-30.

"Area of special mudslide (i.e., mudflow) hazard" is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mud-

flow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

"Association" means the National Flood Insurers Association discussed in Parts 61 and 62 of this subchapter, and is the private insurance industry pool composed of two or more of its members or any member acting for or on behalf of the Association under the Agreement.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Building"—see *"structure."*

"Chargeable rates" mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

"Chief Executive Officer" of the community ("CEO") means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

"Coastal high hazard area" means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30.

"Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Contents coverage" is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

"Criteria" means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in Part 60 of this subchapter.

"Curvilinear Line" means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

"Deductible" means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

"Director" means the Director of the Federal Emergency Management Agency.

"Eligible community" or *"participating community"* means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

"Emergency Flood Insurance Program" or *"emergency program"* means the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

"Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

"Exception" means a waiver from the provisions of Part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

"Existing construction," means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

"Existing mobile home park or mobile home subdivision," means a parcel (or contiguous parcels) of land divided into two or more mobile home

lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of flood plain management regulations adopted by a community.

"Expansion to an existing mobile home park or mobile home subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

"Existing structures" see *"existing construction."*

"Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

"Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

"Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

"Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

"First-layer coverage" is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

"Flood" or *"Flooding"* means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused or precipitated by accumulations of water on or under the ground.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (a)(1) of this section.

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Hazard Boundary Map" (FHBM) means an official map of a community, issued by the Administra-

80-150 O—82——11

tor, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zone A, M, and/or E.

"Flood insurance" means the insurance coverage provided under the Program.

"Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study" see *"flood elevation study."*

"Flood plain" or *"flood-prone area"* means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or *"flood-related erosion prone area"* means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

"Floodway"—see *"regulatory floodway."*

"Floodway encroachment lines" mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"General Counsel" means the General Counsel of the Federal Emergency Management Agency.

"Habitable Floor" means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination

thereof. A floor used only for storage purposes is not a "Habitable Floor."

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Independent scientific body" means a non-federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

"Insurance adjustment organization" means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

"Insurance company" or *"insurer"* means any person or organization authorized to engage in the insurance business under the laws of any State.

"Mangrove stand" means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitous roots above the ground and which contain one or more of the following species: Black mangrove (Avicennia Nitida); red mangrove (Rhizophora Mangle); white mangrove (Languncularia Racemosa); and buttonwood (Conocarpus Erecta).

"Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Federal Insurance Administration.

"Mean sea level" means the average height of the sea for all stages of the tide.

"Mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers. The term includes, but it is not limited to, the definition of "mobile home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 CFR 3282.7(a)).

"Mobile home park or mobile home subdivision"—see *"existing mobile home park or mobile home subdivision"* or *"new mobile home park or mobile home subdivision."*

"Mudslide" (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on or under the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

"Mudslide (i.e., mudflow) prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

"Mudslide (i.e., mudflow) area management" means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

"National Flood Insurers Association" is the industry flood insurance pool authorized by the Director in accordance with sections 1331 and 1332 of the Act (see "Agreement" and "Association") (42 U.S.C. 4051-4052). The Association headquarters are currently located at 1755 South Jefferson Davis Highway, Suite 1102, Arlington, Virginia 22202 (703) 920-8830.

"New construction" means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later. For flood plain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community.

"New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for

rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of flood plain management regulations adopted by a community.

"100-year flood" see *"base flood."*

"Participating community," also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

"Policy" means the Standard Flood Insurance Policy.

"Premium" means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

"Project cost" means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

"Regular Program" means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Risk premium rates" mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Second layer coverage" means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program only where authorized by the Administrator.

"Servicing company" means a corporation, partnership, association, or any other organized entity which subcontracts with the National Flood Insurers Association to service insurance policies under the National Flood Insurance Program for a particular area.

"Sheet flow area"—see *"area of shallow flooding."*

"Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, AI-99, AH, VO, VI-30, M or E.

"Standard Flood Insurance Policy" means the flood insurance policy issued by the National Flood Insurers Association pursuant to Federal statutes and regulations.

"Start of construction" means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

"State" means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

"State coordinating agency" means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

"Storm cellar" means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

"Structure" means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home. "Structure" for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Subsidized rates" mean the rates established by the Administrator involving in the aggregate a subsidization by the Federal Government.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief by a community from the terms of a flood plain management regulation.

"Water surface elevation" means the projected heights in relation to Mean Sea Level reached by floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 1274, Jan. 6, 1981]

§ 59.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in § 59.1) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969). Flood-related erosion (as defined in § 59.1) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, shall be provided within such an area unless the community in which the area is located is then participating in the Program, subject to certain exceptions. See FIA published Guidelines at § 59.4(c).

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at Part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

(c) Minimum requirements for adequate flood plain management regulations are set forth in § 60.3 for flood-prone areas, in § 60.4 for mudslide (i.e., mudflow) areas and in § 60.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.3 Emergency program.

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new Section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program, which under existing law extends to September 30, 1978, does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to Part 60 of this subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

(1) National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), Pub. L. 90-448, approved August 1, 1968, 42 U.S.C. 4001 et seq.

(2) Housing and Urban Development Act of 1969 (Pub. L. 91-152, approved December 24, 1969).

(3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Pub. L. 93-234, approved December 31, 1973.

(4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Pub. L. 93-383, approved August 22, 1974.

(5) Pub. L. 5-128 (effective October 12, 1977).

(6) The above statutes are included in 42 U.S.C. 4001 et seq.

(b) The following are references relevant to the National Flood Insurance Program:

(1) Executive Order 11988 (Floodplain Management, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(2) The Flood Control Act of 1960 (Pub. L. 86-645).

(3) Title II, section 314 of Title III and section 406 of Title IV of the Disaster Relief Act of 1974 (Pub. L. 93-288).

(4) Coastal Zone Management Act (Pub. L. 92-583), as amended Pub. L. 94-370.

(5) Water Resources Planning Act (Pub. L. 89-90), as amended Pub L. 94-112 (October 16, 1975).

(6) Title I, National Environmental Policy Act (Pub. L. 91-190).

(7) Land and Water Conservation Fund Act (Pub. L. 89-578), and subsequent amendments thereto.

(8) Water Resources Council, Principals and Standards for Planning, Water and Related Land Resources (38 FR 24778-24869, September 10, 1973).

(9) Executive Order 11593 (Protection and Enchancement of the Cultural Environment), dated May 13, 1971 (36 FR 8921, May 15, 1971).

(10) 89th Cong., 2nd Session, H.D. 465.

(11) Required land use element for comprehensive planning assistance under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR 600.72).

(12) Executive Order 11990 (Protection of Wetlands, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(13) Water Resources Council (Guidance for Floodplain Management) (42 FR 52590, September 30, 1977).

(14) Unified National Program for Floodplain Management of the United States Water Resources Council, July 1976.

(c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to the mandatory purchase of flood insurance under section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (39 FR 26186-26193, July 17, 1974; 40 FR 16710, April 14, 1975; 40 FR 54277-54278, November 21, 1975; and 41 FR 2426, January 16, 1976).

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Subpart B—Eligibility Requirements

§ 59.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

§ 59.22 Prerequisites for the sale of flood insurance.

(a) To qualify for flood insurance availability a community shall apply for the entire area within its jurisdiction, and shall submit:

(1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A copy of the flood plain management regulations the community has adopted to meet the requirements of §§ 60.3, 60.4 and/or § 60.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

(i) Population;

(ii) Number of one to four family residences;

(iii) Number of small businesses; and

(iv) Number of all other structures.

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHBM's) and Flood Insurance Rate Maps (FIRM's) will be made available for public inspection;

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and State-administered flood plain management regulations;

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

(i) Assist the Administrator at his/her request, in his/her delineation of the limits of the areas having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards;

(ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Administrator may request;

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of flood-proofing, and information on the elevation (in relation to mean sea level) of the level of the lowest habitable floor (including basement if habitable) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;

(v) Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBM's and FIRM's accurately represent the community's bound aries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section, and

(2) Designate the official responsible to submit an annual report to the Administrator concerning the community participation in the Program including, but not limited to the development and implementation of flood plain management regulations and.

(3) Utilize annual report form (OMB No. 63-R1546) as follows:

FEDERAL INSURANCE ADMINISTRATION - ANNUAL REPORT 1975

( ) Community ____________ County ____________ State ____________

( ) Responsible Official ____________ ( ) Title ____________ ( ) Telephone ____________

( ) Address ____________

Signature ____________ Date ____________

( ) ☐ Please check this box and indicate above any change since your last annual report

---

1. PHYSICAL CHANGES AND RECENT FLOODING IN YOUR COMMUNITY

a. Boundary Changes. Have your community's corporate limits or boundaries changed since your last annual report? (IF YES, PLEASE ATTACH A NEW MAP SHOWING REVISED COMMUNITY BOUNDARIES). Yes [ ] No [ ]

b. Natural Changes. Have there been any natural or physical changes which would increase or decrease flooding in your community? (e.g., subsidence, pronounced erosion, seismic effects, sedimentation, or debris build-up)? (IF YES, PLEASE ATTACH THE MOST RECENT FIA FLOOD HAZARD MAP AND INDICATE THE EXTENT OF CHANGES AND THE AREAS AFFECTED). Yes [ ] No [ ]

c. Man-Made Changes. Have there been any projects or activities which would increase or decrease flooding in your community (e.g., dams, dikes, levees, bridges, storm sewers, drainage facilities, extensive filling)? (IF YES, PLEASE ATTACH THE MOST RECENT FIA FLOOD HAZARD MAP AND INDICATE THE EXTENT OF THE ACTIVITIES AND THE AREAS AFFECTED). Yes [ ] No [ ]

d. Recent Flooding. Has any flooding occurred in your community since the last annual report? (IF YES, PLEASE ATTACH THE MOST RECENT FIA FLOOD HAZARD MAP SHOWING THE AREAS AFFECTED, AND ON A SEPARATE SHEET INDICATE FOR EACH FLOOD THE OCCURRENCE DATE, WATER ELEVATION, NUMBER OF STRUCTURES DAMAGED AND ESTIMATE THE FINANCIAL DAMAGE). Yes [ ] No [ ]

2. AMENDMENTS TO EXISTING LAWS

Have any amendments relating to floods or flood areas been made to your community's codes and/or flood plain management laws since your last annual report? (IF YES, PLEASE ATTACH A CERTIFIED COPY OF THE ADOPTED AMENDMENTS). Yes [ ] No [ ]

3. COORDINATION, STATISTICS, AND ESTIMATES

a. Coordination. Has your community had any problems in coordinating its flood plain management program with adjacent communities? (IF YES, PLEASE ATTACH A SEPARATE SHEET EXPLAINING THE PROBLEMS). Yes [ ] No [ ]

b. Statistics. The following data will serve as an indication of your community's effectiveness in enforcing its flood plain management measures.

	Number Requested	Number Granted
(1.) Construction permits in the flood-prone areas		
(2.) Variances from the 100-year flood elevation requirement		
(3.) Other variances from FIA flood plain management requirements		
(4.) Total variances from all FIA requirements (combined total of #(2) & (3))		
(5.) Of the total variances from all FIA requirements, how many were for structures on lots exceeding 1/2 acre?		

c. Estimates. (Estimate the answer for the following, using the best data and sources available):

	Population	No. of 1-4 Family Structures	No. of Small Business Structures	No. of All Other Structures
Estimates of totals in the special flood hazard areas delineated on the FIA Flood Insurance Rate Map (i.e., using all zones except B, C, & D)				
Estimates of totals in the entire community.				

OMB NO. 63-R1546

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to the Federal Insurance Administrator, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

(d) A copy of the documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted by an applicant to the appropriate State and areawide clearinghouses established in accordance with Part I of OMB Circular No. A-95 (41 FR 2052-2065, January 13, 1976). Clearinghouse review of the documents shall not be a prerequisite to the Administrator's acceptance of a community's application for the availability of flood insurance under the Emergency Program. However, clearinghouses may assist the applicant in assuring maximum consistency with State, regional and local comprehensive plans and flood plain management programs.

§ 59.23 Priorities for the sale of flood insurance under the regular program.

Flood-prone, mudslide (i.e., mudflow) and flood-related erosion prone communities are placed on a register of areas eligible for ratemaking studies and then selected from this register for ratemaking studies on the basis of the following considerations—

(a) Recommendations of State officials;

(b) Location of community and urgency of need for flood insurance;

(c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;

(d) Availability of information on the community with respect to its flood, mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;

(e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d) or (e) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, he shall, no later than 30 days before the expiration of the original six month period, provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under Part 64 of this subchapter, of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce or repeals its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 or § 60.5 shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and publication in the FEDERAL REGISTER under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management regulations adopted in compliance with the requirements of this subpart, together with evidence of action taken by the community to abrogate, to the maximum extent possible, the action(s) which caused the suspension. In such cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may either conditionally reinstate the community's eligibility or withhold reinstatement for a period not to exceed one year from the date of his receipt of the submission.

(c) The Administrator shall promptly notify the Association of those communities whose eligibility has been suspended, and the Association shall promptly notify its servicing companies. Flood insurance shall not be sold or renewed in any suspended community until the Association is subsequently notified by the Administrator of the date of the community's formal reinstatement. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A—Requirements for Flood Plain Management Regulations

Sec.
60.1 Purpose of subpart.
60.2 Minimum compliance with flood plain management criteria.
60.3 Flood plain management criteria for flood-prone areas.
60.4 Flood plain management criteria for mudslide (i.e., mudflow) -prone areas.
60.5 Flood plain management criteria for flood-related erosion-prone areas.
60.6 Variances and exceptions.
60.7 Revisions of criteria for flood plain management regulations.
60.8 Definitions.

Subpart B—Requirements for State Flood Plain Management Regulations

60.11 Purpose of this subpart.
60.12 Flood plain management criteria for State-owned properties in special hazard areas.
60.13 Noncompliance.

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

60.21 Purpose of this subpart.
60.22 Planning considerations for flood-prone areas.
60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.
60.24 Planning considerations for flood-related erosion-prone areas.
60.25 State coordination.
60.26 Local coordination.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; Sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Requirements for Flood Plain Management Regulations

§ 60.1 Purpose of subpart.

(a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in § 60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in § 60.3 for flood-prone areas, § 60.4 for mudslide areas and § 60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in Subpart C of this part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in Subpart A of this part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence.

§ 60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of § 60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in § 60.3 (b), (c), (d), or (e) in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in § 60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in § 60.3 (c), (d), or (e) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of § 60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of § 60.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of § 60.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of § 60.5(b).

(d) Communities identified in Part 65 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide [i.e., mudflow], and flood-related erosion hazard areas) shall adopt flood plain management regulations for each type of hazard consistent with the requirements of §§ 60.3, 60.4 and 60.5.

(e) Local flood plain management regulations may be submitted to the State Coordinating Agency designated pursuant to § 60.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual reports to the Administrator pursuant to § 59.22(b)(2) of this subchapter shall also submit copies of each annual report to any State Coordinating Agency.

(g) A community shall assure that its comprehensive plan is consistent with the flood plain management objectives of this part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Administrator. Without prior approval of the Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

(i) The community, upon its receipt of the data set forth in paragraph (c), (d) or (e) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, shall inform the appropriate State and areawide clearinghouse established in accordance with Part I of OMB Circular No. A-95 (41 FR 2052-2065, January 13, 1976), that the community has a period of six months in which to adopt and submit to the Administrator adequate flood plain management regulations. (The clearinghouses are encouraged to assist the community within the six month period in developing such regulations and in assuring regional coordination.) The community shall submit to the appropriate State and areawide clearinghouse, concurrently with its submission to the Administrator, a copy of all adopted flood plain management regulations intended to comply with paragraphs (c), (d) or (e) of § 60.3 or paragraph (b) of § 60.4 or § 60.5. Clearinghouse review, for a period not to exceed sixty days from the date a community submits flood plain management regulations to the clearinghouse, shall be provided prior to the Administrator's action on such regulations. Clearinghouse comments, or a statement by the community that no comments or recommendations have been received from the clearinghouse, should be submitted by the community to the Administrator. However, it may be necessary for the clearinghouse to review the community's regulations within a shorter time period in the event of pending action to suspend the community's Program participation, pursuant to § 59.24 of this subchapter, for failure to adopt adequate flood plain management regulations within the required six months. The Administrator, within seven working days of taking a major action on the community's flood plain management submission, shall provide a copy of his/her disposition concerning the submission to each clearinghouse from which a comment was received.

§ 60.3 Flood plain management criteria for flood-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special flood hazard area designations and water surface elevations have been furnished by the Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community, including the placement of mobile homes, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) be constructed with materials and utility equipment resistant to flood damage, and (iii) be constructed by methods and practices that minimize flood damage;

(4) Review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and

(6) Require within flood-prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) Require permits for all proposed construction and other developments including the placement of mobile homes, within Zone A on the community's FHBM;

(2) Require the application of the standards in paragraphs (a) (2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHBM;

(3) Require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) Obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State, or other source, until such other data has been provided by the Administrator, as criteria for requiring that (i) all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and (ii) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or floodproofed to or above the base flood level;

(5) For the purpose of the determination of applicable flood insurance risk premium rates within Zone A on a community's FHBM, (i) obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and wheth-

er or not such structures contain a basement, (ii) obtain, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Require that all mobile homes to be placed within Zone A on a community's FHBM shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that (i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side; (ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side; (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and (iv) any additions to the mobile home be similarly anchored;

(9) Require that an evacuation plan indicating alternate vehicular access and escape routes be filed with appropriate Disaster Preparedness Authorities for mobile home parks and mobile home subdivisions located within Zone A on the community's FHBM.

(c) When the Administrator has provided a notice of final flood elevations for one or more special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

(1) Require the standards of paragraph (b) of this section within all A1-30 zones unnumbered A zones, AH zones, and AO zones, on the community's FIRM;

(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30 and AH zones on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements and/or storm cellars in accordance with § 60.6(b)(3) and (b)(4);

(3) Require that all new construction and substantial improvements of nonresidential structures within Zones A1-30 and AH zones on the community's firm (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) Provide that where floodproofing is utilized for a particular structure in accordance with paragraphs (c)(3) and (c)(8) of this section or (b)(3) of § 60.6 either (i) a registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii); or, (ii) a certified copy of a local regulation containing detailed flood-proofing specifications which satisfy the watertight performance standards of paragraph (c)(3) of this section or (b)(3) of § 60.6 shall be submitted to the Administrator for approval;

(5) Require within Zones A1-30 on the community's FIRM for new mobile home parks and mobile home

subdivisions, for expansions to existing mobile home parks and mobile home subdivisions, and for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, that (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten feet apart, and reinforcement is provided for pilings more than six feet above the ground level;

(6) Require for all mobile homes to be placed within Zones A1-30 on the community's FIRM, but not into a mobile home park or mobile home subdivision that (i) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided for piers more than six feet above ground level;

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

(9) Require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) thru (a)(4)(i) and (b)(5) thru (b)(9) of this section;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(d) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones A99 zones and unnumbered A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(9) of this section;

(2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;

(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(4) Prohibit the placement of any mobile homes, except in an existing mobile home park or mobile home subdivision, within the adopted regulatory floodway.

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 on the community's FIRM and, if appropriate, has designated AO zones, A99 zones and unnumbered A zones on the community's FIRM, and has identified on the community's FIRM Zone V1-30 (coastal high hazard area), the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(10) of this section;

(2) For the purpose of the determination of applicable flood insurance risk premium rates within Zone V1-30 on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been flood-proofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1-30 on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide (i) that all new construction and substantial improvements within Zones V1-30 on the community's FIRM are elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level and (ii) that a registered professional engineer or architect certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash;

(5) Provide that all new construction and substantial improvements within Zones V1-30 on the community's FIRM have the space below the lowest floor free of obstructions or be constructed with "breakaway walls" intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind-driven water is minimized. Such temporarily enclosed space shall not be used for human habitation;

(6) Prohibit the use of fill for structural support of buildings within Zones V1-30 on the community's FIRM;

(7) Prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1-30 on the community's FIRM;

(8) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30 on the community's FIRM which would increase potential flood damage.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 1274, Jan. 6, 1981]

§ 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in § 64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, subdrains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

§ 60.5 Flood plain management criteria for flood-related erosion-prone areas.

The Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;

(2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

(3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Administrator has delineated Zone E on the community's FIRM, the community shall

(1) Meet the requirements of paragraph (a) of this section; and

(2) Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

§ 60.6 Variances and exceptions.

(a) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. The Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Administrator may take appropriate action under § 59.24(b) of this subchapter. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this section. Procedures for the granting of variances by a community are as follows:

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, con-

sidering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a)(6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual report submitted to the Administrator.

(b)(1) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion prone community must adopt and submit adequate flood plain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in §§ 60.3, 60.4 or § 60.5. However, certain exceptions from the standards contained in this subpart may be permitted where the Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and gross inequity for a particular community. Consequently, a community proposing the adoption of flood plain management regulations which vary from the standards set forth in §§ 60.3, 60.4, or § 60.5, shall explain in writing to the Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, and data with respect to the impact on public safety and the environment.

(2) The Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant impact on the human environment. The decision whether an (i) Environmental Impact Statement (EIS) or (ii) a Finding of Inapplicability is required must be made by the Environmental Clearance Officer of the initiating office with the approval of the Assistant Secretary for Community Planning and Development based on review by the Director, Office of Environmental Quality and the General Counsel (Assistant General Counsel for Finance and Administrative Law) in accord with HUD Handbook 1390.1 (38 FR 19182, 19186), "Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality" which implements the National Environmental Policy Act of 1969 (Pub. L. 91-190) for FEMA programs, and guidelines of the Council on Environmental Quality (40 CFR Part 1500). Ninety or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

(3) In accordance with paragraph (b)(1) of this section, a community may propose flood plain management regulations which adopt standards for basements below the base flood level. The Administrator may approve the proposal when the basements are to be designed so that below the base flood level the structure is watertight (i.e., completely dry without human intervention during flooding) with walls impermeable to the passage of water and structural components with the capability to resist hydrostatic and hydrodynamic loads and effects of buoyancy.

(4) In accordance with paragraph (b)(1) of this section, a community may propose flood plain management regulations to permit storm cellars below the base flood level. The Administrator may approve the proposal for storm cellars (as defined in § 59.1 of this subchapter) after the community has demonstrated an historical need for storm cellars as a means of shelter against recorded occurrences of severe tornado or similar wind storm activities in the area and based upon a community's acknowledgement that (i) all

new storm cellars shall be limited to nonhabitable uses, (ii) all electrical, heating and other mechanical equipment shall be above the base flood level for all new storm cellars; and (iii) the design of storm cellars shall assure that the integrity of the main structure during time of flooding is maintained.

§ 60.7 Revisions of criteria for flood plain management regulations.

From time to time Part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

§ 60.8 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

Subpart B—Requirements for State Flood Plain Management Regulations

§ 60.11 Purpose of this subpart.

(a) A State is considered a "community" pursuant to § 59.1 of this subchapter; and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Administrator, pursuant to Part 75 of this subchapter, of its plan of self-insurance.

§ 60.12 Flood plain management criteria for State-owned properties in special hazard areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5. A State either shall:

(1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or

(2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in §§ 60.3, 60.4, and 60.5.

(b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in §§ 60.3, 60.4 and 60.5 may vary from the procedures by which local governments satisfy the criteria.

(c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a)(2) of this section for the property.

§ 60.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to § 60.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to suspensive action pursuant to § 59.24. Where the State fails to adequately enforce its flood plain management regulations, the Administrator shall conduct a hearing before initiating such suspensive action.

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone and Flood-Related Erosion-Prone Areas

§ 60.21 Purpose of this subpart.

The purpose of this subpart is to encourage the formation and adoption of overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

§ 60.22 Planning considerations for flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should:

(1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;

(2) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence of a flood disaster, each community shall consider—

(1) Preservation of the flood-prone areas for open space purposes;

(2) Relocation of occupants away from flood-prone areas;

(3) Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;

(4) Acquisition of frequently flood-damaged structures;

(c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—

(1) Human safety;

(2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;

(3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;

(4) Adverse effects of flood plain development on existing development;

(5) Encouragement of floodproofing to reduce flood damage;

(6) Flood warning and emergency preparedness plans;

(7) Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring subdividers to furnish delineations for floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;

(14) Requirement of setbacks for new construction within Zones V1-30 on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones A1-30 and V1-30 on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

§ 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.

The planning process for communities identified under Part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to § 59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

(a) The existence and extent of the hazard;

(b) The potential effects of inappropriate hillside development, including

(1) Loss of life and personal injuries, and

(2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;

(c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;

(d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filing, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and

(h) Provision for emergencies, including (1) warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow), (2) enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow), (3) fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides, (4) provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems, (5) similar provisions for sewers which in the event of rupture pose both health and site stability hazards and (6) provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);

(i) The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

§ 60.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under Part 65 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to § 59.22 of this subchapter that they have flood-related erosion areas should include—

(a) The importance of directing future developments to areas not exposed to flood-related erosion;

(b) The possibility of reserving flood-related erosion-prone areas for open space purposes;

(c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;

(d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;

(e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

§ 60.25 State coordination.

(a) State participation in furthering the objectives of this part should include:

(1) Encouraging and assisting communities in qualifying for participation in the Program;

(2) Enacting where necessary, legislation to enable counties and municipalities to regulate flood, mudslide (i.e., mudflow) and flood-related erosion area development;

(3) Designating an agency of the State government to be responsible for coordinating Federal, State, and local aspects of flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management activities in the State;

(4) Assisting in the delineation of flood-related erosion areas, mudslide (i.e., mudflow) areas, riverine floodways, and coastal high hazard areas, and providing all relevant technical data to the Administrator;

(5) Establishing minimum State flood plain, mudslide (i.e., mudflow) and flood-related erosion regulatory standards consistent with those established in this part;

(6) Guiding and assisting municipal and county public bodies and agencies in developing flood plain, mudslide (i.e., mudflow) and flood-related erosion area management plans and flood plain management regulations;

(7) Recommending priorities for rate-making studies among those communities of the State which qualify for such studies;

(8) Communicating flood plain, mudslide (i.e., mudflow) and flood-related erosion area information to local governments and to the general public;

(9) Participating in flood, mudslide (i.e., mudflow) and flood-related erosion warning and emergency preparedness programs;

(10) Assisting communities in disseminating information on minimum elevations for structures permitted in flood plain areas having special hazards, and in disseminating other information relating to mudslide (i.e., mudflow) and flood-related erosion areas having special hazards;

(11) Advising public and private agencies (particularly those whose activities or projects might obstruct drainage or the flow of rivers or streams or increase slope instability) on the avoidance of unnecessary aggravation of flood, mudslide (i.e., mudflow) and flood-related erosion hazards;

(12) Requiring that proposed uses of flood plain, mudslide (i.e., mudflow) and flood-related erosion areas conform to standards established by State environmental and water pollution control agencies to assure that proper safeguards are being provided to prevent pollution during periods of flooding;

(13) Providing local communities with information on the Program, with particular emphasis on the coordination of State and Federal requirements pertaining to the management of flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion-prone areas;

(14) Assuring coordination and consistency of flood plain management and planning with comprehensive planning at the state, areawide and local levels;

(15) Amending state recording acts so that the following may be recorded for the public's knowledge: (i) a parcel of land and/or a structure is located within a flood-prone, mudslide (i.e., mudflow) and/or flood-related erosion prone area and (ii) a variance has been granted for building at an elevation below the base flood level, thereby resulting in increased premium rates for flood insurance under the Program.

(16) Assuring coordination between its State Coordinating Agency and any State office established to supervise state participation in the Coastal Zone Management Program;

(17) Providing notification to the Administrator in the event a participating community violates the Program's requirements;

(18) Assuring coordination efforts in the event a dispute over enactment and administration of flood plain management regulations arises between communities.

(b) For States whose flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management program substantially encompass the activities described in paragraph (a) of this section, the Administrator shall:

(1) Give special consideration to State priority recommendations before selecting communities for ratemaking studies from the register described in § 59.23 of this subchapter;

(2) Accept State approved and certified local flood plain management regulations as meeting the requirements of this part.

§ 60.26 Local coordination.

(a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;

(b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;

(c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

PART 61—INSURANCE COVERAGE AND RATES

Sec.
61.1 Purpose of part.
61.2 Definitions.
61.3 Types of coverage.
61.4 Limitations on coverage.
61.5 Special terms and conditions.
61.6 Maximum amounts of coverage available.
61.7 Risk premium rate determinations.
61.8 Applicability of risk premium rates.
61.9 Establishment of chargeable rates.
61.10 Minimum premiums.
61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.
61.12 Rates based on a flood protection system involving Federal funds.
61.13 Standard Flood Insurance Policy.
61.14 Standard Flood Insurance Policy Interpretations.
61.15 Assumption of liabilities under all Outstanding Flood Insurance Policies issued by the National Flood Insurers Association.
APPENDICES

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575 (42 U.S.C. 4013); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

SOURCE: 43 FR 2570, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds. The specific communities eligible for coverage are designated by the

Administrator from time to time as applications are approved under the emergency program and as ratemaking studies of communities are completed prior to the regular program. Lists of such communities are periodically published under Part 64 of this subchapter.

§ 61.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 61.3 Types of coverage.

Insurance coverage under the Program is available for structures and their contents. Coverage for each may be purchased separately. One policy to provide insurance for more than one structure is not available under the Program.

§ 61.4 Limitations on coverage.

(a) All flood insurance made available under the Program is subject:

(1) To the Act, the Amendments thereto, and the Regulations issued under the Act;

(2) To the terms and conditions of the Standard Flood Insurance Policy, which shall be promulgated by the Administrator for substance and form, and which is subject to interpretation by the Administrator as to scope of coverage pursuant to the applicable statutes and regulations;

(3) To the specified limits of coverage set forth in the Application and Declarations page of the policy; and

(4) To the maximum limits of coverage set forth in § 61.6.

(b) Insurance under the Program is available only for loss due to flood, as defined in § 59.1 of this subchapter. The policy covers damage from a general condition of flooding in the area which results from other than natural causes, such as the breaking of a dam, but does not cover damage which results from causes on the insured's own property or within his control or from any condition which causes damage, which condition is substantially confined to the insured's premises or properties immediately adjacent thereto.

(c) The policy does not cover losses from rain, snow, sleet, hail, or water spray that do not result in a general condition of flooding. It covers losses from freezing or thawing, or from the pressure or weight of ice and water, only where they occur simultaneously with and as a part of flood damage. It covers losses from mudslide (i.e., mudflow) but does not cover damage from landslides or from earthquakes or similar earth movements which are volcanic or tectonic in origin. The policy does not cover erosion which is not flood-related, claims resulting from occurrences already in progress at the time of the inception date of the term of the policy, or losses caused by land slippage rather than mudslide (see definition of mudslide/mudflow in § 59.1 of this subchapter). Damage by seepage and sewer backup may be covered only when directly resulting from a flooding situation. Abnormal erosion caused by high water levels accompanied by violent wave action along a lake or other body of water is considered a flood (see definition of flood-related erosion in § 59.1 of this subchapter). However, there is no coverage where normal, continuous wave action, accompanied by erosion or the gradual and anticipated wearing away of the land is the proximate cause of property damage.

(d) The policy protects against loss to contents only at the location described in the application, except that contents necessarily removed from the premises for preservation from a flood are protected against loss or damage from flood at the new location, if placed in a fully enclosed building, pro rata for a period of 45 days.

§ 61.5 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies shall be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (i.e., mudflow) or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application.

(c) Because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if the insurer ceases to have an ownership interest in the covered property at the location described in the policy. Refunds of premiums for any other reason are subject to the conditions set forth in § 62.5 of this subchapter.

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is: (1) For structural losses, $200, and (2) for contents losses, $200.

(e) Payment for a loss under the policy does not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate flood occurrence, but all losses arising out of a continuous or protracted occurrence are deemed to have arisen out of a single occurrence.

(f) The following property and contents for residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, and coins or stamps;

(2) Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open;

(3) Land values, lawns, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure;

(4) Animals, birds, fish, aircraft, motor vehicles including parts and equipment (other than motorized equipment pertaining to the service of the premises and not licensed for highway use), trailers on wheels, watercraft including their furnishings and equipment; or business property.

(g) The following property and contents for nonresidential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidence of debt, money, securities, bullion, manuscripts or other valuable papers or records, and coins or stamps;

(2) Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; personal property in the open;

(3) Land values, lawns, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structures;

(4) Automobiles including parts and equipment, any self-propelled vehicle or machine, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured; watercraft or aircraft.

(h) The policy on an eligible property may be cancelled by the insurer only for nonpayment of premium. However, any willful misrepresentation or concealment of any material fact by the insured at any time voids the entire policy as of the date the wrongful act was committed, but does not affect coverage prior to the date of the wrongful act.

(i) The standard flood insurance policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent.

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

	Emergency program		Regular program—Total amount available
	First layer	Second layer	
Single family residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	35,000	150,000	185,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	[1] 150,000	185,000
Other residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	150,000	[2] 150,000	250,000
Small business	100,000	150,000	250,000
Churches and other properties	100,000	100,000	200,000
Contents			
Residential	10,000	50,000	60,000
Small business	100,000	200,000	300,000
Churches, other properties (per unit)	100,000	100,000	200,000

[1] NOTE: Add to 35,000.

[2] NOTE: Add to 100,000.

(b) The maximum limits of coverage required under the Act are twice the amounts available under First Layer Coverage.

§ 61.7 Risk premium rate determinations.

(a) Pursuant to section 1307 of the Act, the Administrator is authorized to undertake studies and investigations to enable him/her to estimate the risk premium rates necessary to provide flood insurance in accordance with accepted actuarial principles, including applicable operating costs and allowances. Such rates are also referred to in this subchapter as "actuarial rates."

(b) The Administrator is also authorized to prescribe by regulation the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the Program. Such rates are referred to in this subchapter as "chargeable rates." For areas having special flood, mudslide (i.e., mudflow), and flood-related erosion hazards, chargeable rates are usually lower than actuarial rates.

§ 61.8 Applicability of risk premium rates.

Risk premium rates are applicable to all flood insurance made available for:

(a) Any structure, the construction or substantial improvement of which was started after December 31, 1974 or on or after the effective date of the initial FIRM, whichever is later.

(b) Coverage which exceeds the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands, and Guam (i) $35,000 aggregate liability for any property containing only one unit, (ii) $100,000 for any property containing more than one unit, and (iii) $10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) $50,000 aggregate liability for any property containing only one unit, (ii) $150,000 for property containing more than one unit, and (iii) $10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) $100,000 for the structure and (ii) $100,000 for contents of any such unit.

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this part would exceed the risk premium rates.

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under Part 64 of this subchapter for the offering of flood insurance:

Rates for New and Renewal Policies

Type of structure	Rates per year per $100 coverage	
	Structures	Contents
(1) Residential	$0.40	$0.50
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.50	1.00

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

(42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329) and Executive Order 12127 (44 FR 19367))

[46 FR 42675, Aug. 24, 1981]

§ 61.10 Minimum premiums.

The minimum premium required for any policy, regardless of the term or amount of coverage, is $50.00.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367) Executive Order 11988, dated May 24, 1977 and 44 CFR Part 9, Delegation of Authority to Federal Insurance Administrator)

[46 FR 13514, Feb. 23, 1981]

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

(a) The effective date and time of any new or added or increase in the amount of flood insurance coverage shall be 12:01 a.m. of the day following the application date and the presentment of payment of premium in the following cases:

(1) During the 30-day period which follows a community's initial eligibility for flood insurance under the emergency program;

(2) During the 30-day period which follows a community's initial eligibility for flood insurance under the regular program;

(3) At any time as to any application for additional coverage or increased limits made in connection with a policy then in force.

(b) Where title to property is conveyed, any new or added coverage or increase in the amount of coverage with respect to the property shall be effective as of the time title to the property is transferred to the purchaser, provided the written request for the new or added coverage is received by the NFIP (P.O. Box 34294, Bethesda, Maryland 20034) when:

(1) The flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the transfer of title; or

(2) The existing flood insurance policy on the property was assigned to the purchaser at or before the transfer of title to the property.

(c) Except as provided by (a) or (b) of this section the effective date and time of any new policy shall be 12:01 a.m. (local time) on the 5th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on April 1 to cover property located in a community that has been participating in the program longer than 30 days will become effective at 12:01 a.m. on April 6.

(d) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy. The additional premium for any new coverage or increase in the amount of coverage shall be calculated pro rata in accordance with the rates currently in force.

(e) With respect to any submission of an application in connection with new business, the payment by an Insured to an Insured's agent or the issuance of premium payment by the agent does not constitute payment to the NFIP. Therefore, it is important that an application for Flood Insurance and its premium be mailed to the NFIP (P.O. Box 34294, Bethesda, Maryland 20034) promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the premium payment are received at the NFIP within ten (10) days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of application even though the application and premium payment are received at the NFIP after ten (10) days following the date of application. Thus, if the application and premium payment are received after ten (10) days from the date of the application or are not mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of receipt by the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term "endorsement" for the term "application" in this paragraph (e).

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (43 FR 7719, February 24, 1978) (National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367) Executive Order 11988, dated May 24, 1977 and 44 CFR Part 9, Delegation of Authority to Federal Insurance Administrator)

[43 FR 50427, Oct. 30, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 13514, Feb. 23, 1981]

§ 61.12 Rates based on a flood protection system involving Federal funds.

(a) Where the Administrator determines that a community has made adequate progress on the construction of a flood protection system involving federal funds which will significantly limit the area of special flood hazards, the applicable risk premium rates for any property, located within a special flood hazard area intended to be protected directly by such system will be those risk premium rates which would be applicable when the system is complete.

(b) Adequate progress in paragraph (a) of this section means that the community has provided information to the Administrator sufficient to determine that substantial completion of the flood protection system has been effected because:

(1) 100 percent of the total financial project cost of the completed flood protection system has been authorized;

(2) At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;

(3) At least 50 percent of the total financial project cost of the completed flood protection system has been expended;

(4) The flood protection system's physical features are under construction and 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

(5) The community has not been responsible for any delay in the completion of the system.

(c) Each request by a community for a determination must be submitted in writing to the Engineering Division, Office of Flood Insurance, Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472, and contain a complete statement of all relevant facts relating to the flood protection system, including, but not limited to, supporting technical data (e.g., U.S. Army Corps of Engineers flood protection project data), cost schedules, budget appropriation data and the extent of federal funding of the system's construction. Such facts shall include information sufficient to identify all persons affected by such flood protection system or by such request; a full and precise statement of intended purposes of the flood protection system; and a carefully detailed description of such project, including construction completion target dates. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. Relevant facts reflected in documents, however, must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of paragraph (b) of this section, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the person responsible for preparing the application for the community, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and the purpose of that litigation. The request must also contain a statement as to whether the community has previously requested a determination with respect to the same subject matter from the Administrator, detailing the disposition of such previous request. As documents become part of the file and cannot be returned, the original documents should not be submitted.

(d) The effective date for any risk premium rates established under this section shall be the date of final determination by the Administrator that adequate progress toward completion of a flood protection system has been made in a community.

(e) A responsible official of a community which received a determination that adequate progress has been made towards completion of a flood protection system shall certify to the Administrator annually on the anniversary date of receipt of such determination that no present delay in completion of the system is attributable to local sponsors of the system, and that a good faith effort is being made to complete the project.

(f) A community for which risk premium rates have been made available under section 1307(e) of the National Flood Insurance Act of 1968, as amended, shall notify the Administrator if, at any time, all progress on the completion of the flood protection system has been halted or if the project for the completion of the flood protection system has been canceled.

§ 61.13 Standard Flood Insurance Policy.

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in Appendix "A" hereto ("General Property" and "Dwelling Building and Contents") and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

(b) *Endorsements.* All endorsements to the Standard Flood Insurance Policy shall be final upon publication in the FEDERAL REGISTER for inclusion in Appendix A.

(c) *Applications.* The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy.

(d) *Waivers.* The Standard Flood Insurance Policy and required endorsements must be used in the Flood Insurance Program, and no provision of the said documents shall be altered, varied, or waived other than through the issuance of an appropriate amendatory endorsement, approved by the Administrator as to form and substance for uniform use.

(e) *Oral and written binders.* No oral binder or contract shall be effective. No written binder shall be effective unless issued with express authorization of the Administrator.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979 and amended at 44 FR 62517, Oct. 31, 1979]

§ 61.14 Standard Flood Insurance Policy Interpretations.

(a) *Definition.* A Standard Flood Insurance Policy Interpretation is a written determination by the Administrator construing the scope of the flood insurance coverage that has been and is provided under the policy.

(b) *Publication and requests for interpretation.* The Administrator shall, pursuant to these regulations from time to time, issue interpretative rulings regarding the provisions of the Standard Flood Insurance Policy. Such Interpretations shall be published in the FEDERAL REGISTER, made a part of Appendix C to these regulations, and incorporated by reference as part of these regulations. Any policyholder or person in privity with a policyholder may file a request for an interpretation in writing with the Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

§ 61.15 Assumption of Liabilities under all Outstanding Flood Insurance Policies issued by the National Flood Insurers Association.

On January 1, 1978, all Standard Flood Insurance Policies issued by the National Flood Insurers Association prior to January 1, 1978, which have their annual policy period extending into the calendar year 1978, shall be considered to be Standard Flood Insurance Policies issued by the Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472.

APPENDIX A (1)

FEDERAL EMERGENCY MANAGEMENT AGENCY
FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

(Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof)

DWELLING FORM

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations form made a part hereof and subject to all the terms of this policy, the insurer does insure the Insured and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY "FLOOD" as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto, or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flood, but not elsewhere.

Assignment of this policy by the Insured is allowed. The Insurer under this Policy is the Federal Emergency Management Agency.

DEFINITION OF "FLOOD"

Wherever in this policy the term "flood" occurs, it shall be held to mean: A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslide (i.e., mudflow), a river or flow of liquid mud approximately caused by flooding as defined in subparagraph A-2 above or by the accumulation of water under the ground.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the anticipated cycilical levels.

PERILS EXCLUDED

The Insurer shall not be liable for loss:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water, except where the property covered has been simultaneously damaged by flood; (3) water, moisture or mudslide (i.e., mudflow) damage of any kind resulting primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties immediately adjacent thereto; or (4) seepage, backup of water, or hydrostatic pressure not related to a condition of "flood" as defined;

B. Caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces; (2) insurrection, rebellion, revolution, civil war usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By the theft or by fire, windstorm explosion, earthquake, landslide or any other earth movement except such mudslide or erosion as is covered under the peril of flood;

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by the peril insured against;

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save and preserve the property at the time of and after an occurrence of the peril insured against by this policy; but for contents covered herein and subject to the terms of the policy including the limits of liability, the Insurer will reimburse the Insured for reasonable expenses necessarily incurred by him in complying with the requirements of this paragraph, including but not limited to, reasonable expenses for removal or temporary storage (not exceeding 45 days), or both, of insured contents, from the described premises because of the imminent danger of flood.

PROPERTY COVERED

A. Dwelling.—The term "dwelling" shall mean a residential building designed for the occupancy of from 1 to 4 families and occupied principally for dwelling purposes by the number of families stated herein.

When the insurance under this policy covers a dwelling, such insurance shall include additions in contact therewith; also, if the property of the owner of the described dwelling and when not otherwise covered, building equipment, fixtures and outdoor equipment, all pertaining to the service of the described premises and while within an enclosed structure located on the described premises; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction, alteration or repair of such dwelling or appurtenant private structures on the described premises.

The Insured may apply up to 10% of the amount of insurance applicable to the dwelling covered under this policy, not as an additional amount of insurance, to cover loss to appurtenant private structures (other than the described dwelling and additions in contact therewith) located on the described premises. This extension of coverage shall not apply to structures (other than structures used exclusively for private garage purposes) which are rented or leased in whole or in part, or held for such rental or lease, to other than a tenant of the described dwelling of which are used in whole or in part for commercial manufacturing of farming purposes.

B. Contents.—When the insurance under this policy covers contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a dwelling—except other property not covered under the provisions of this policy, and any property more specifically covered in whole or in part by other insurance including the peril insured against in this policy, belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the option of the Insured, belonging to a servant or guest of the Insured; all while within an enclosed structure located on the described premises.

The Insured may apply up to 10% of the amount of insurance applicable to the contents covered under this policy not as an additional amount of insurance as follows:

(a) If not owner of the described premises, to cover loss to improvements alterations, and additions to the described dwelling appurtenant enclosed private structures as described above.

(b) If an individual condominium unit owner of the described premises, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a condominium association policy on the described dwelling and appurtenant enclosed private structures as described aboved.

The Insurer shall not be liable for loss in any one occurrence for more than:

1. $500.00 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glass or bric-a-brac);

2. $500.00 in the aggregate on jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver or platinum and furs or any article containing fur which represents its principal value.

C. Debris Removal.—This insurance covers expense incurred in the removal of debris of or on the dwelling, appurtenant enclosed private structures or contents covered hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

PROPERTY NOT COVERED

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, securities, bullion, manuscripts or other valuable papers or records, numismatic or philatelic property.

B. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open.

C. Land values; lawn, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure.

D. Animals, birds, fish; aircraft and motor vehicles (other than motorized equipment pertaining to the services of the premises and not licensed for highway use) including their parts and equipment; trailers on wheels; watercraft including their furnishings and equipment; and business property.

DEDUCTIBLES

A. With respect to loss to the dwelling, appurtenant private structures, and debris removal covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $200.00.

B. With respect to loss to contents or debris removal covered hereunder, or to expenses, incurred under paragraph F of "Perils Excluded," the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $200.00.

REPLACEMENT COST PROVISIONS

These provisions shall apply only to a Single Family Dwelling covered hereunder. Outdoor radio and television antennas and aerials, carpeting, awnings, domestic appliances and outdoor equipment, all whether attached to the building structure or not, are excluded from the replacement cost coverage.

A. If at the time of loss the total amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, or is the maximum amount of insurance available under the National Flood Insurance Program, the coverage of this policy applicable to such dwelling is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to said dwelling is less than 80% of the full replacement cost of such dwelling and less than the maximum amount of insurance available under the National Flood Insurance Program, the Insurer's liability for loss under this policy shall not exceed the larger of the following amounts:

1. The actual cash value (meaning replacement cost less depreciation) of that part of the dwelling damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling damaged or destroyed, which the total amount of insurance applicable to said dwelling bears to 80% of the full replacement cost of such dwelling.

If 80% of the full replacement cost of such dwelling is greater than the maximum amount of insurance available under the National Flood Insurance Program, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. The Insurer's liability for loss under this policy shall not exceed the smallest of the following amounts:

1. The limit of liability of this policy applicable to the damaged or destroyed building.

2. The replacement cost of the dwelling or any part therof identical with such dwelling on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said dwelling or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said dwelling, the Insurer shall not be liable for any loss under paragraph A or subparagraph B-2 of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. The Named Insured may elect to disregard this condition in making claim hereunder, but such election shall not prejudice the Named Insured's right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

GENERAL CONDITIONS AND PROVISIONS

A. Pair and Set Clause.—If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. Concealment, Fraud.—This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

C. Other Insurance.—The Insurer shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the Insurer upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. Added and Waiver Provisions.—The extent of the application of insurance under this policy and of the contribution to be made by the Insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Insurer relating to appraisal or to any examination provided for herein.

E. Cancellation of Policy or Reduction in Amount of Insurance.—This policy may be cancelled at any time at the request of the Insured, in which case the Insurer shall, upon demand and surrender of this policy, refund the excess of paid premiums above the customary short rates for the expired time; provided, however, that the premium paid for the then current policy term shall be fully earned if the Insured retains an interest in the property covered at the location described in the application and declarations form.

The amount of insurance under this policy may be reduced at any time at the request of the Insured, in which case the Insurer shall, upon demand, refund the excess of paid premiums above the customary short rates for the expired time for the amount of the reduction; provided, however, that the premium paid for the then current policy term shall be fully earned to the extent that the Insured retains an interest in the property covered at the location described in the application and declarations form.

This policy may be cancelled by the Insurer for non-payment of the premium by giving to the Insured a 20-days' written notice of cancellation.

F. Conditions Suspending or Restricting Insurance.—Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the Insured), when such act or neglect is not within the control of the Insured.

G. Alterations and Repairs.—Permission is granted to make alterations, additions and repairs, and to complete structures in course of construction. In the event of loss hereunder, the Insured is permitted to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by the peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

H. Property of Others.—Unless otherwise provided in writing added hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insurer. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

I. Liberalization Clause.—If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Insurer there be adopted under the National Flood Insurance Act of 1968, or any acts amendatory thereof, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

J. Statutory Provisions.—Any terms of this policy which are in conflict with the statutes of the state wherein the property is located are hereby amended to conform to such statutes, except that in cases of conflict with applicable Federal law or regulation, such Federal law or regulation shall control the terms of this policy.

K. Loss Clause.—Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. Mortgage Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy).—Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgagees upon the property described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortagage or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagees (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

M. Mortgagee Obligations.—If the Insured fails to render proof of loss, the named mortgagee (or trustee) upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

N. Requirements In Case of Loss.—The Insured shall give written notice, as soon as practicable to the Insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Insurer, the Insured shall render to the Insurer, a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Insurer, may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Insurer all that remains of any property herein described, and submit to examinations under oath by any person named by the Insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurer or its representative, and shall permit extracts and copies thereof to be made.

O. Appraisal.—In case the Insured and the Insurer shall fail to agree as to the actual cash value or the amount of loss, then on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately acutal cash value and loss of each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

P. Options.—It shall be optional with the Insurer to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

Q. Abandonment.—There shall be no abandonment to the Insurer of any property.

R. When Loss Payable.—The amount of loss for which the Insurer may be liable shall be payable 60 days after proof of loss, as herein provided, is received by the Insurer and ascertainment of the loss is made either by agreement between the Insured and the Insurer expressed in writing or by the filing with the Insurer of an award as herein provided.

S. Action Against the Insurer.—No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer may be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

T. Subrogation.—In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's right of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such right; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the described property.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized representative of the Insurer.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

APPENDIX A (2)

FEDERAL EMERGENCY MANAGEMENT AGENCY
FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

[Issued Pursuant to the National Flood Insurance Acts of 1968, or Any Act Amendatory Thereof]

GENERAL PROPERTY FORM

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations form made a part hereof and subject to all the terms of this policy, the Insurer does insure the Insured and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a resonable time after such loss. Without allowance for any increased cost of repair or reconstruction by reason of only ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all *direct loss by "flood"* as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flood", but not elsewhere.

Assignment of this policy by the Insured is allowed. The Insurer under this Policy is the Federal Emergency Management Agency.

———

DEFINITION OF "FLOOD"

Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslide (i.e., mudflow), a river or flow of liquid mud proximately caused by flooding as defined in subparagraph A-2 above or by the accumulation of water under the ground.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the anticipated cyclical levels.

PERILS EXCUDED

The Insurer shall not be liable for loss:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water except where the property covered has been simultaneously damaged by flood; (3) water moisture or mudslide (i.e., mudflow) damage of any kind resulting primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties immediately adjacent thereto or; (4) seepage backup of water, or hydrostatic pressure not related to a condition of "flood" as defined;

B. Caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government power authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By theft or by fire windstorm explosion earthquake landslide or any other earth movement except such mudslide or erosion as is covered under the peril of flood;

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located caused by the peril insured against.

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save and preserve the property at the time of and after an occurrence of the peril insured against by this policy; but for contents covered herein and subject to the terms of the policy including the limits of liability, the Insurer will reimburse the Insured for reasonable expenses necessarily incurred by him in complying with the requirements of this paragraph including but not limited to reasonable expenses for removal or temporary storage (not exceeding 45 days), or both of insured contents, from the described premises because of the imminent danger of flood.

PROPERTY COVERED

A. Building.— When the insurance under this policy covers a building, such insurance shall include additions and extensions attached thereto; permanent fixtures, machinery and equipment forming a part of and pertaining to the service of the building; personal property of the insured as landlord used for the maintenance or service of the building including fire extinguishing apparatus, floor coverings, refrigerating and ventilating equipment, all while within the described building; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction alteration or repair of such building or appurtenant private structures on the described premises.

When the insurance under this policy covers a building used for residential purposes, the insured may apply up to 10% of the amount of insurance, applicable to such building, not as an additional amount of insurance, to cover loss to appurtenant private structures (other than the described building and additions and extensions attached thereto) located on the described premises. This extension of coverage shall not apply to structures. (Other than structures used exclusively for private garage purposes) which are rented or leased in whole or in part, or held for such rental or lease, to other than a tenant of the described building, or which are used in whole or in part for commercial, manufacturing or farming purposes.

B. Contents.— When the insurance under this policy covers contents, coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this policy covers other than household contents, such insurance shall cover merchandise and stock, materials and stock supplies of every description; furniture, fixtures, machinery and equipment of every description all owned by the insured; improvements and betterments (as hereinafter defined) to the building if the insured is not the owner of the building and when not otherwise covered; all while within the described inclosed building.

2. When the insurance under this policy covers household contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a residence—except animals, birds, fish, business property, other property not covered under the provisions of this policy, and any property more specifically covered in whole or in part by the other insurance including the peril insured against in this policy; belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the option of the Insured, belonging to a servant or guest of the Insured; all while within the described building.

The Insured, if not the owner of the described building, may apply up to 10% of the amount of insurance applicable to the household contents covered under this item, not as an additional amount of insurance, to cover loss to improvements and betterments (as hereinafter defined) to the described building.

The Insured, if an individual condominium unit owner in the described building, may apply up to 10% of the amount of insurance on contents covered under this policy, not as an additional amount of insurance, to cover loss to the interior walls floors and ceilings that are not otherwise covered under a condominium association policy on the described building.

The Insurer shall not be liable for loss in any one occurrence for more than:

(a) $500,000 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glass or bric-a-brac);

(b) $500,000 in the aggregate on jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver or platinum and furs or any article containing fur which represents its principal value.

3. When the insurance under this policy covers improvements and betterments, such insurance shall cover the Insured's used interest in improvements and betterments to the described building.

(a) The term "improvements and betterments" wherever used in this policy is defined as fixtures, alterations, installations, or additions comprising a part of the described building and made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, but which are not legally subject to removal by the Insured.

(b) The word "lease" wherever used in this policy shall mean the lease or rental agreement, whether written or oral, in effect as of the time of loss.

(c) In the event improvements and betterments are damaged or destroyed during the term of this policy by the peril insured against, the liability of the Insurer shall be determined as follows:

(1) If repaired or replaced at the expense of the Insured within a reasonable time after such loss, the actual cash value of the damaged or destroyed improvements and betterments.

(2) If not repaired or replaced within a reasonable time after such loss, that proportion of the original cost at time of installation of the damaged or destroyed improvements and betterments which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease.

(3) If repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

C. Debris Removal.— This insurance covers expense incurred in the removal of debris of or on the building or contents covered hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

PROPERTY NOT COVERED

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, securities, bullion, manuscripts or other valuable papers or records, numismatic or philatelic property.

B. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or partially over water; or personal property in the open.

C. Land values; lawn, trees, shrubs or plants, growing crops, or livestock; underground structures or underground equipment, and those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the structure.

D. Automobiles; any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the Insured; watercraft or aircraft.

E. Contents specifically covered by other insurance except for the excess of value of such property above the amount of such insurance.

DEDUCTIBLES

A. With respect to loss to the building, appurtenant private structures, and debris removal covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $200.00.

B. With respect to loss to contents or debris removal covered hereunder, or to expenses, incurred under paragraph F of "Perils Excluded," the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $200.00.

GENERAL CONDITIONS AND PROVISIONS

A. Pair and Set Clause.—If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. Concealment, Fraud.—This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

C. Other Insurance.—The Insured shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the insurer upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. Added and Waiver Provision.—The extent of the application of insurance under this policy and of the contribution to be made by the Insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Insurer relating to appraisal or to any examination provided for herein.

E. Cancellation of Policy or Reduction in Amount of Insurance.—This policy may be cancelled at any time at the request of the Insured, in which case the Insurer shall, upon demand and surrender of this policy, refund the excess of paid premiums above the customary short rates for the expired time; provided, however, that the premium paid for the then current policy term shall be fully earned if the Insured retains an interest in the property covered at the location described in the application and declarations form.

The amount of insurance under this policy may be reduced at any time at the request of the Insured, in which case the Insurer shall, upon demand, refund the excess of paid premiums above the customary short rates for the expired time for the amount of the reduction; provided, however, that the premium paid for the then current policy term shall be fully earned to the extent that the Insured retains an interest in the property covered at the location described in the application and declarations form.

This policy may be cancelled by the Insurer for non-payment of the premium by giving to the Insured a 20-days' written notice of cancellation.

F. Conditions Suspending or Restricting Insurance.—Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the insured), when such act or neglect is not within the control of the Insured.

G. Alterations and Repairs.—Permission is granted to make alterations, additions and repairs, and to complete structures in course of construction. In the event of loss hereunder, the Insured is permitted to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by the peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

H. Property of Others (Servants and Guests Only).—Unless otherwise provided in writing added hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insurer. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

I. Liberalization Clause.—If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Insurer there be adopted under the National Flood Insurance Act of 1968, or any acts amendatory thereof, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

J. Statutory Provisions.—Any terms of this policy which are in conflict with the statutes of the state wherein the property is located are hereby amended to conform to such statutes, except that in cases of conflict with applicable Federal law or regulations, such Federal law or regulation shall control the terms of this policy.

K. Loss Clause.—Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate occurrence of the peril insured against hereunder provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. Mortgage Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy).—Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

M. Morgagee Obligations.—If the Insured fails to render proof of loss, the named mortgagee (or trustee), upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

N. Loss Payable Clause (Applicable to contents items only).—Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. Requirements in Case of Loss.—The Insured shall give written notice, as soon as practicable, to the Insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Insurer, the Insured shall render to the Insurer, a proof of loss, signed and sworn to by the Insured stating the knowledge and belief of the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Insurer, may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Insurer all that remains of any property herein described, and submit to examinations under oath by any person named by the Insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurer or its representative, and shall permit extracts and copies thereof to be made.

P. Appraisal.—In case the Insured and the Insurer shall fail to agree as to the actual cash value of the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Q. Options.—It shall be optional with the Insurer to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

R. Abandonment.—There shall be no abandonment to the Insurer of any property.

S. When Loss Payable.—The amount of loss for which the Insurer may be liable shall be payable 60 days after proof of loss, as herein provided, is received by the Insurer and ascertainment of the loss is made either by agreement between the Insured and the Insurer expressed in writing or by the filing with the Insurer of an award as herein provided.

T. Action Against the Insurer.—No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer may be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. Subrogation.—In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's right of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such right; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the described property.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized representative of the Insurer.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

Endorsement 1

CONDOMINIUM ASSOCIATION ENDORSEMENT

If the named Insured on this policy is a condominium association, then at the time of loss by flood the following terms, subject to all other provisions of the policy, will apply:

1. The building coverage of this policy, subject to the stated limits will cover damage to all building items covered under the policy and owned in common by the condominium association members.

2. The building coverage of this policy, subject to the stated limits, is extended to cover damage to all structural items within the Individual Condominium Units, including walls, floors, ceilings, and their related coverings, such as paint, paper, panelling, carpeting, and tile. Also covered are installed appliances for heating, cooling, plumbing and electrical purposes. The structural items may be original installations or replacement or additional items.

3. The building coverage outlined in paragraph 2 above has application only to the extent that the policy's stated limits have not been exhausted under paragraph 1.

4. The policy deductible relating to the building coverage shall be applied against the total damage to all of the building's structural elements and not against the covered loss, and shall not be applied separately in the case of each unit sustaining damage.

5. The contents coverage of this policy covers damage, subject to the stated limits, to all contents items owned in common by the association members and contained in the insured building or removed therefrom in accordance with the policy's terms.

6. The policy deductible relating to contents coverage shall be applied against the total damage to all contents owned in common by the condominium association members and contained in the insured building or removed therefrom in accordance with the policy's terms and not against the covered loss.

7. Loss under this endorsement shall be adjusted with the condominium association and shall be payable to the insurance trustee of record, as designated by the association.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), as amended (42 U.S.C. 4001-4128))

[43 FR 2570, Jan. 17, 1978, as amended at 44 FR 32215, June 5, 1979. Redesignated at 44 FR 31177, May 31, 1979]

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A—Issuance of Policies

Sec.
62.1 Purpose of part.
62.2 Definitions.
62.3 Servicing Agent.
62.4 Limitations on sale of policies.
62.5 Premium refund.
62.6 Minimum commissions.

Subpart B—Claims Adjustment and Judicial Review

62.21 Claims adjustment.
62.22 Judicial review.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575 (42 U.S.C. 4013); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, unless otherwise noted.

Subpart A—Issuance of Policies

§ 62.1 Purpose of part.

The purpose of this Part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under Part 64 of this subchapter, and to prescribe the general method by which the Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

§ 62.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 62.3 Servicing Agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Administrator has entered into the Agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) The following company has been contracted to act as a servicing agent for the Federal Insurance Administration:

Electronic Data Systems Federal Corporation, 6430 Rockledge Drive, Bethesda, Maryland 20034.

(c) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under Parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

(d) Applications and premiums should be mailed to:

National Flood Insurance Program, P.O. Box 34294, Bethesda, MD 20034.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367) Executive Order 11988, dated May 24, 1977 and 44 CFR Part 9, Delegation of Authority to Federal Insurance Administrator)

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 13515, Feb. 23, 1981]

§ 62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, in any area the Administrator designates in Part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this part, the Agreement, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Administrator.

§ 62.5 Premium refund.

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under Part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted.

§ 62.6 Minimum commissions.

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures for an insured, shall not be less than $10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Policy term	Premium amount	Commissions (percent)
1 year	1st of $2,000	15
	Excess of $2,000	5
3 years	1st of $6,000	15
	Excess of $6,000	5

(2) In the case of mid-term increases in amounts of insurance added by endorsement, the following commissions shall apply based on the total premium paid for the increased amounts of insurance:

Premium amounts	Commission (percent)
1st of $2,000	15
Excess of $2,000	5

(b) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission; and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis. In such cases, the policy shall be immediately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367) Executive Order 11988, dated May 24, 1977 and 44 CFR Part 9, Delegation of Authority to Federal Insurance Administrator)

[46 FR 13515, Feb. 23, 1981]

Subpart B—Claims Adjustment and Judicial Review

§ 62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and Parts 61 and 62 of this subchapter.

§ 62.22 Judicial Review.

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4053, institute an action on such claim against the Director of the Federal Emergency Management Agency in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate

United States Attorney, the Attorney General of the United States, and the Director of the Federal Emergency Management Agency.

PART 63—[RESERVED]

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Sec.
64.1 Purpose of part.
64.2 Definitions.
64.3 Flood Insurance Maps.
64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.
64.5 Relationship of rates to zone designations.
64.6 List of eligible communities.

AUTHORITY: Sec. 7(b), 79 Stat. 670; 42 U.S.C. 3535(d); Sec. 1361, 82 Stat. 587; 42 U.S.C. 4102; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

SOURCE: 41 FR 46986, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 64.1 Purpose of part.

(a) 42 U.S.C. 4012(c), 4022, and 4102 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Administrator has: (1) Identified the areas of special flood, mudslide (i.e., mudflow) or flood-related erosion hazards within the community under Part 65 of this subchapter; and/or (2) completed a risk study for the applicant community. A period of 15 years ending July 31, 1983, was allotted for this purpose. The priorities for conducting such risk studies are set forth in §§ 59.23 and 60.25 of this subchapter. A purpose of this part is periodically to list those communities in which the sale of insurance under the regular program has been authorized.

(b) 42 U.S.C. 4056 authorizes an emergency implementation of the National Flood Insurance Program whereby, for a period ending on September 30, 1978, the Administrator may make subsidized coverage available to eligible communities prior to the completion of detailed risk studies for such areas. This part also describes procedures under the emergency program and lists communities which become eligible under that program.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128): and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[41 FR 46986, Oct. 26, 1976, as amended at 43 FR 7141, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§ 64.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this Part.

§ 64.3 Flood Insurance Maps.

(a) The following maps may be prepared by the Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. It indicates the risk premium rate zones applicable in the community and when those rates are effective. The symbols used to designate those zones are as follows:

Zone symbol	
A	Area of special flood hazard withou water surface elevations deter mined.
A1-99	Area of special flood hazard wit water surface elevations dete mined.
A0	Area of special flood hazards havir shallow water depths and/or u predictable flow paths between (and (3) ft.
AH	Areas of special flood hazar having shallow water depths an or unpredictable flow paths t tween (1) and (3) feet, and w water surface elevations det mined.
V1-30	Area of special flood hazards, v velocity, that is inundated by t floods (coastal high hazard ar
V0	Area of special flood hazards ha shallow water depths and/or predictable flow paths betweer and (3) ft. and with velocity.

Zone symbol	
B	Area of moderate flood hazards.
C	Area of minimal hazards.
D	Area of undetermined but possible, flood hazards.
M	Area of special mudslide (i.e., mudflow) hazards.
N	Area of moderate mudslide (i.e., mudflow) hazards.
P	Area of undetermined, but possible, mudslide hazards.
E	Area of special flood-related erosion hazards.

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) will be designated by use of the proper symbols in combination.

(2) Flood Hazard Boundary Map (FHBM). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1-99, A0, V1-30, V0, M, and E.

(c) The FHBM or FIRM shall be maintained for public inspection at the following locations:

(1) The Information Office of the State agency or agencies designated by statute or the respective Governors to cooperate with the Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood-prone pursuant to Part 65 of this subchapter;

(2) One or more official locations within the community in which flood insurance is offered, which shall be specified in Part 65 of this subchapter at the time identification of the community as flood-prone is announced by publication in the FEDERAL REGISTER;

(3) The NFIA servicing company for the State or area (additional copies may be obtained from the appropriate servicing company) (See § 62.7);

(4) The official record copy of each official map shall be maintained in FIA files in Washington, D.C.

(42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329) and Executive Order 12127 (44 FR 19367))

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 1274, Jan. 6, 1981]

§ 64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an area within another community participating in the Program, no new flood insurance shall be made available as of the effective date of annexation until the newly acquiring community participates in the Program. Until the effective date of participation, existing flood insurance policies remain in effect until the policy's date of expiration, but shall not be renewed.

(b) When a community participating in the Program acquires by means of annexation, incorporation, or otherwise, another area which was previously located in a community either participating or not participating in the Program, the community shall have six months from the date of acquisition to formally amend its flood plain management regulations in order to include all flood-prone areas within the newly acquired area. The amended regulations shall satisfy the applicable requirements in § 60.3 of this subchapter based on the data previously provided by the Administrator. In the event that the newly acquired area was previously located in a community participating in the Program, the provisions of this section shall only apply if the community, upon acquisition, and pending formal adoption of the amendment to its flood plain management regulations, certifies in writing over the signature of a community official that within the newly acquired area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly-acquired area was previously located in a community not participating in the Program, the provisions of the section shall only apply if the community, upon acquisition, and pending formal adoption of the amendments to its flood plain management regulations, certifies in writing over the signature of a community official that it shall enforce within the newly-acquired area the requirements of § 60.3(b) of this subchapter. During the six month period, existing flood insurance policies shall remain in effect until their date of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in § 60.3 shall result in the community's suspension from Program participation pursuant to § 59.24 of this subchapter.

(c) When an area previously a part of a community participating in the Program becomes autonomous or becomes a portion of a newly autonomous community resulting from boundary changes, governmental reorganization, changes in state statutes or constitution, or otherwise, such new community shall be given six months from the date of its independence, to adopt flood plain management regulations within the special hazard areas subject to its jurisdiction and to submit its application for participation as a separate community in order to retain eligibility for the sale of flood insurance. The regulations adopted by such new community shall satisfy the applicable requirements in § 60.3 of this subchapter based on the data previously provided by the Administrator. The provisions of this section shall only apply where the new community upon the date of its independence certifies in writing over the signature of a community official that, pending formal adoption of flood plain management regulations, the flood plain management requirements previously applicable in that area remain in effect. During the six month period, existing flood insurance policies shall remain in effect until their dates of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in § 60.3 of this subchapter shall result in the community's suspension from Program participation pursuant to § 59.24 of this subchapter.

(d) Where any community or any area within a community had in effect a FHBM or FIRM, but all or a portion of that community has been acquired by another community, or becomes autonomous, that map shall remain in effect until it is superseded by the Administrator, whether by republication as part of the map of the acquiring community, or otherwise.

(e) When a community described in paragraph (a), (b), (c), or (d) of this section has flood elevations in effect, no new appeal period under Parts 66, 67, and 68 of this subchapter will begin except as new scientific and technical data are available.

§ 64.5 Relationship of rates to zone designations.

(a) In order to expedite a community's qualification for flood insurance under the emergency program, the Administrator may authorize the sale of such insurance without designating any Zones A, M, or E within a community, provided the community has previously adopted flood plain management regulations meeting the requirements of § 60.3(a), § 60.4(a) or § 60.5(a) of this subchapter. When the Administrator has obtained sufficient technical information to delineate Zones A, M, or E, he/she shall delineate the tentative boundaries on a FHBM.

(b) Upon the effective date of the FIRM, flood insurance will continue to be available throughout the entire community at chargeable rates (i.e., subsidized) for first layer coverage of existing structures, but will be only available at risk premium rates for all new construction and substantial improvements. Upon the effective date of a FIRM, second layer coverage is available only at risk premium rates for all structures.

(c) Detailed insurance information may be obtained from the servicing companies. See Part 62 of this subchapter.

§ 64.6 List of eligible communities.

The sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001-4128) is authorized for the communities set forth under this section. Previous listings under this Part continue in effect until revised.

NOTE: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Sec.
65.1 Purpose of Part.
65.2 Definitions.
65.3 List of communities with special hazard areas (FHBM's in effect).
65.4 List of communities with detailed engineering data (FIRM's).
65.5 Requirement to submit new technical data.
65.6 Administrative withdrawal of maps.
65.7 List of communities with minimal hazard areas.
65.8 List of communities with no special flood hazard areas.
65.9 List of communities with minimal flood hazard areas.

Authority: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d), Sec. 1360, 82 Stat. 587, 42 U.S.C. 4101; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

Source: 41 FR 46987, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, unless otherwise noted.

§ 65.1 Purpose of Part.

42 U.S.C. 4101 authorizes the Administrator to identify and publish information with respect to all areas within the United States having special flood, mudslide (i.e., mudflow) and flood-related erosion hazards. The purpose of this part is to list those communities that have been identified by the Administrator as having such special flood, mudslide (i.e., mudflow) or flood-related erosion hazards. Additional communities will be added to this list from time to time as the necessary information becomes available. This part also provides a list of communities for which detailed engineering data in the form of water surface elevation data for the flood with one percent chance of being equalled or exceeded in any given year and the flood insurance rate zones for the special hazard areas within those communities has been made available. Additionally, this part contains information concerning the revision of Flood Hazard Boundary Maps (FHBM's) or Flood Insurance Rate Maps (FIRM's), and notice of administrative withdrawal of special flood hazard maps (i.e., FHMB's or FIRM's).

§ 65.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 65.3 List of communities with special hazard areas (FHBM's in effect).

Note: For the list of communities and the designated A, M, and E zones issued under this Section and not carried in the Code of Federal Regulations, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 65.4 List of communities with detailed engineering data (FIRM's).

(a) *General.* This section provides a cumulative list of communities for which the Administrator already has in effect, or has scheduled to have in effect, a FIRM, thereby usually providing water surface elevations for all or portions of Zones A and V.

(b) The effective date of the most recent revision of the FIRM for the communities listed are entered as follows (which will not appear in the Code of Federal Regulations except for the page number at this entry in the Federal Register).

[42 FR 9110, Feb. 14, 1977. Redesignated at 44 FR 31177, May 31, 1979]

Note: For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 65.5 Requirement to submit new technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. Within six months of the date that such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this paragraph. Such submission is necessary so that upon confirmation of those physical changes affecting flooding conditions risk premium rates and flood plain management requirements will be based upon current data.

(a) The Chief Executive Officer (CEO) of a community participating in the Program shall submit to the Administrator technical or scientific information indicating that the base flood elevations on the community's FIRM do not accurately reflect flood risks as they currently exist. Such information shall include, but not necessarily be limited to:

(1) A topographic map exhibiting ground elevation contours in greater detail than maps available at the time of the flood insurance study, or exhibiting topographic or ground elevation changes since the flood insurance study was performed; and

(2) Hydrologic data which has become available since the flood insurance study was performed, such as photographs or historical records of a major flooding occurrence or a flood study or information developed by an appropriate authoritative source, such as a Federal or State agency, a County Water Control District, and a County, City or private registered professional engineer. Hydrologic information shall be of sufficient detail so that the hydrologic computations may be evaluated by the Administrator; or

(3) Information about flood control projects, such as stream channelization, construction of new dams, reservoirs, artificial canals, private levees, or flood protection systems. Such information shall:

(i) Be submitted at least six months prior to the expected completion date of the project, and

(ii) Include a complete plan of the project with cross sections and dimensions, together with a detailed map of the affected area indicating changes in base flood elevations caused by construction of the project, and

(iii) Be reflected on the community's FIRM only after the project has been completed, except as may be provided in this subchapter.

(b) The technical and scientific information indicating changes in base flood elevations shall be submitted to:

Engineering Division, Office of Flood Insurance, Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, NW, Washington DC 20472.

(c) Upon receipt of the scientific or technical data, the Administrator shall (1) mail an acknowledgement to the CEO, and (2) notify the CEO within 90 days that:

(i) The base flood elevations on the effective FIRM are correct and shall not be modified; or

(ii) The flood elevations on the effective FIRM shall be modified, and new base flood elevations shall be established under the provisions of Part 67 of this subchapter; or

(iii) An additional 90 days is required to evaluate the scientific or technical data submitted.

§ 65.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).*

The following is a cumulative list of withdrawals pursuant to this part:

40 FR 5149
40 FR 17015
40 FR 20798
40 FR 46102
40 FR 53579
40 FR 56672
41 FR 1478
41 FR 50990
41 FR 13352
41 FR 17726
42 FR 8895
42 FR 29433
42 FR 46226
42 FR 64076
43 FR 24019
44 FR 815
44 FR 6383
44 FR 18485
44 FR 25636
44 FR 34120
44 FR 52835
44 FR 57094
44 FR 12421
44 FR 26051
44 FR 31318
44 FR 34120
45 FR 49570
45 FR 52385
46 FR 13695
46 FR 20176
46 FR 26776
46 FR 46811

(b) *Flood Insurance Rate Maps (FIRM's).*

The following is a cumulative list of withdrawals pursuant to this part:

40 FR 17015
41 FR 1478
42 FR 49811
42 FR 64076
43 FR 24019
44 FR 25636
44 FR 12421
45 FR 49570
46 FR 20176
46 FR 46811

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001—4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

[46 FR 46810, Sept. 22, 1981]

NOTE: For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 65.7 List of communities with minimal hazard areas.

[44 FR 61027, Oct. 23, 1979]

NOTE: For the list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 65.8 List of communities with no special flood hazard areas.

[44 FR 61033, Oct 23, 1979]

NOTE: For the list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 65.9 List of communities with minimal flood hazard areas.

[44 FR 5079, Jan. 25, 1979. Redesignated at 44 FR 31177, May 31, 1979]

NOTE: For the list of communities issued under this section and not carried in the CFR, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

PART 66—CONSULTATION WITH LOCAL OFFICIALS

Sec.

66.1 Purpose of part.
66.2 Definitions.
66.3 Establishment of Community Case File and flood elevation study docket.
66.4 Appointment of consultation coordination officer.
66.5 Responsibilities for consultation and coordination.

AUTHORITY: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329) and Executive Order 12127 (44 FR 19367).

SOURCE: 41 FR 46988, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 66.1 Purpose of part.

(a) The purpose of this part is to comply with section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4107) by establishing procedures for flood elevation determinations of Zones A1-99 and V1-30 within the community so that adequate consultation with the community officials shall be assured.

(b) The procedures in this part shall apply when base flood elevations are to be determined or modified.

(c) The Administrator or his delegate shall:

(1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).

(2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods employed in reaching such conclusions; and

(3) Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(4) Carry out the responsibilities for consultation and coordination set forth in § 66.5 of this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 35922, July 13, 1981]

§ 66.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 66.3 Establishment of community case file and flood elevation study docket.

(a) A file shall be established for each community at the time initial consideration is given to studying that community in order to establish whether or not it contains flood-prone areas. Thereafter, the file shall include copies of all correspondence with officials in that community. As the community is tentatively identified, provided with base flood elevations, or suspended and reinstated, documentation of such actions by the Administrator shall be placed in the community file. Even if a map is administratively rescinded or withdrawn after notice under Part 65 of this subchapter or the community successfully rebuts its flood-prone designation, the file will be maintained indefinitely.

(b) A portion of the community file shall be designated a flood elevation study consultation docket and shall be established for each community at the time the contract is awarded for a flood elevation study. The docket shall include copies of (1) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Federal Insurance Administration representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Administrator's final determination.

(c) A flood elevation determination docket shall be established and maintained in accordance with Part 67 of this subchapter.

§ 66.4 Appointment of consultation coordination officer.

The Administrator may appoint an employee of the Federal Emergency Management Agency, or other designated Federal employee, as the Consultation Coordination Officer, for each community when an analysis is undertaken to establish or to modify flood elevations pursuant to a new study or a restudy. When a CCO is appointed by the Administrator, the responsibilities for consultation and coordination as set forth in § 66.5 shall be carried out by the CCO. The Administrator shall advise the community and the state coordinating agency, in writing, of this appointment.

[46 FR 35922, July 13, 1981]

§ 66.5 Responsibilities for consultation and coordination.

(a) Contact shall be made with appropriate officials of a community in which a proposed investigation is undertaken, and with the state coordinating agency.

(b) Local dissemination of the intent and nature of the investigation shall be encouraged so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(c) Submission of information from the community concerning the study shall be encouraged.

(d) Appropriate officials of the community shall be fully informed of (1) the responsibilities placed on them by the Program, (2) the administrative procedures followed by the Federal Insurance Administration, (3) the community's role in establishing elevations, and (4) the responsibilities of the community if it participates or continues to participate in the Program.

(e) Before the commencement of an initial Flood Insurance Study, the CCO or other FEMA representative, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend. At this meeting, the local officials shall be informed of (1) the date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained. The community shall be informed in writing if any of the six preceding items are or will be changed after this initial meeting and during the course of the ongoing study.

(f) The community shall be informed in writing of any intended modification to the community's final flood elevation determinations or the development of new elevations in additional areas of the community as a result of a new study or restudy. Such information to the community will include the data set forth in subparagraph (e) of this section. At the discretion of the Director of the Insurance and Mitigation Division in each FEMA Regional Office, a meeting may be held to accomplish this requirement.

[46 FR 35922, July 13, 1981]

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Sec.

67.1 Purpose of Part.
67.2 Definitions.
67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).
67.4 Proposed flood elevation determination.
67.5 Right of appeal.
67.6 Basis of appeal.
67.7 Collection of appeal data.
67.8 Appeal procedure.
67.9 Final determination in the absence of an appeal by the community.
67.10 Rates during pendency of final determination.
67.11 Notice of final determination.
67.12 Appeal to District Court.

AUTHORITY: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4012); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 41 FR 46989, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 67.1 Purpose of Part.

The purpose of this part is to establish procedures implementing the provisions of section 110 of Flood Disaster Protection Act of 1973.

§ 67.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).

The Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

(a) The name of the community subject to the flood elevation determination;

(b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;

(c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;

(d) A copy of the notice of the proposed flood elevation determination published in the FEDERAL REGISTER;

(e) Copies of all appeals by private persons received by the Administrator from the CEO;

(f) Copies of all comments received by the Administrator on the notice of the proposed flood elevation determination published in the FEDERAL REGISTER.

(g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;

(h) A copy of the flood insurance study for the community;

(i) A copy of the FIRM for the community;

(j) Copies of all materials maintained in the flood elevation study consultation docket; and

(k) A copy of the final determination with supporting documents.

§ 67.4 Proposed flood elevation determination.

The Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the FEDERAL REGISTER;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

§ 67.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made pursuant to section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Administrator's proposed determination.

§ 67.6 Basis of appeal.

The sole basis of an appeal under this part shall be the possession of knowledge or information indicating that the elevations proposed by the Administrator are scientifically or technically incorrect.

§ 67.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's proposed flood elevation determination and shall be placed in the FEDD.

§ 67.8 Appeal procedure.

(a) If a community appeals the proposed flood elevation determination, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his/her proposed determination is based.

(b) The Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in Part 68 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under § 67.12.

(e) The Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with § 67.12.

§ 67.9 Final determination in the absence of an appeal by the community.

(a) If the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with § 67.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in § 67.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals.

§ 67.10 Rates during pendency of final determination.

(a) Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to purchase flood insurance at the subsidized rate.

(b) After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin not later than six months after the final flood elevation determination.

§ 67.11 Notice of final determination.

The Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the FEDERAL REGISTER, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

NOTE: For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 67.12 Appeal to District Court.

(a) An appellant aggrieved by the final determination of the Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Director shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with the provisions of 5 U.S.C. 706, as modified by 42 U.S.C. 4104(b).

PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.

68.1 Purpose of Part.
68.2 Definitions.
68.3 Right to administrative hearings.
68.4 Judge.
68.5 Establishment of docket.
68.6 Time and place of hearing.
68.7 Conduct of hearings.
68.8 Scope of review.
68.9 Admissible evidence.
68.10 Burden of proof.
68.11 Right of judge to obtain scientific or technical advice.
68.12 Determination.
68.13 Relief.

AUTHORITY: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4012); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 41 FR 46990, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 68.1 Purpose of Part.

The purpose of this part is to establish procedures for appeals of the Administrator's base flood elevation determination, whether proposed pursuant to section 1363(e) of the Act (42 U.S.C. 4104) or modified because of changed conditions or the availability of additional newly acquired scientific or technical information.

§ 68.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 68.3 Right to administrative hearings.

An administrative hearing under this Part shall only be held if a community appeals the Administrator's flood elevation determination established pursuant to § 67.8 of this subchapter, or otherwise, and the Administrator has determined that such appeal cannot be resolved by consultation with officials of the community, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

§ 68.4 Judge.

Each hearing shall be conducted by an Administrative Law Judge (hereinafter "Judge") certified by the Civil Service Commission or by a Hearing Officer (hereinafter "Judge") designated by the Director.

§ 68.5 Establishment of docket.

The General Counsel shall establish a docket for appeals referred to him by the Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the FEDD file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements, and other legal documents, a transcript of the hearing, and the judge's final determination.

§ 68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the judge for that hearing. He shall promptly advise the Administrator and the General Counsel of such designation.

(b) The judge's notice of the time and place of hearing shall be sent by the Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing must be sent no less than 30 days before the date of hearing unless such period is waived by all appellants.

§ 68.7 Conduct of hearings.

(a) The judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Administrator shall be represented by the General Counsel or his designee.

(c) One administrative hearing shall be made for any one community unless the judge for good cause shown grants a separate appeal or appeals.

(d) The CEO or his designee shall represent all appellants from that community; provided that any appellant may petition the judge to allow such appellant to make an appearance on his own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) The Administrator shall assure that a transcribed verbatim record is made of the proceeding which shall be available for inspection by any appellant. An appellant may order copies of the transcribed verbatim record directly from the reporter and shall be responsible for payments.

§ 68.8 Scope of review.

Review at administrative hearings shall be limited to an examination of knowledge or information presented by each appellant indicating that elevations proposed by the Administrator are scientifically or technically incorrect.

§ 68.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at administrative hearings. However, only evidence relevant to issues within the scope of review under § 68.8 shall be admissible.

(b) The community's FEDD file shall be admissible.

(c) Documentary and testimonial evidence shall be admissible.

(d) Admissibility of non-expert testimony shall be within the discretion of the judge.

(e) The community's statement of reasons for appealing shall be admissible.

(f) All testimony shall be under oath.

§ 68.10 Burden of proof.

The burden shall be on appellants to prove that the flood elevation determination is not scientifically or technically correct.

§ 68.11 Right of judge to obtain scientific or technical advice.

The judge may submit conflicting technical or scientific data to an independent scientific body or appropriate Federal agency for advice.

§ 68.12 Determination.

The judge shall make a written determination on the evidence presented at the hearing within 30 days after the conclusion of the hearing.

§ 68.13 Relief.

The sole relief which shall be granted under this Part is a modification of the Administrator's proposed determination by the judge in accordance with his determination under § 68.12. This modification shall be binding on the Administrator.

PART 69—[RESERVED]

PART 70—PROCEDURE FOR MAP CORRECTION

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

Sec.

70.1 Purpose of Part.
70.2 Definitions.
70.3 Right to submit technical information.
70.4 Review by the Administrator.
70.5 Letter of Map Amendment.
70.6 Distribution of Letter of Map Amendment.

Sec.
70.7 Notice of Letter of Map Amendment.
70.8 Premium refund after Letter of Map Amendment.

AUTHORITY: Sec. 1304(a), 82 Stat. 574 (42 U.S.C. 4011); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 41 FR 46991, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

§ 70.1 Purpose of Part.

The purpose of this part is to provide an administrative procedure whereby the Federal Insurance Administrator (Administrator) will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, A0, A1-99, V0 and V1-30 Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either a FHBM or FIRM. Where there has been a final base flood elevation determination, any alteration of the topography shall not be subject to this procedure. Appeals of such determinations are subject to the provisions of Part 67 of this subchapter.

§ 70.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, A0, A1-99, V0 and V1-30 Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for his/her review.

(b) Scientific and technical information for the purpose of this Part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest floor (including basement) of the structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resources), a County Water Control District, a County or City Engineer, a Federal Insurance Administration Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor of the type of structure and that the lowest floor (including basement) of the structure is above the base flood level. Where there has been a final flood elevation determination, and fill has altered the topography, such certification should include the date that the fill was placed on the property.

§ 70.4 Review by the Administrator.

The Administrator, after reviewing the scientific or technical information submitted under the provisions of § 70.3, shall notify the applicant in writing of his/her determination within 60 days from the date of receipt of the applicant's scientific or technical information that:

(a) The property is within a designated A, A0, A1-99, V0 or V1-30 Zone, and shall set forth the basis of such determination; or

(b) The property should not be included within a designated A, A0, A1-99, V0, or V1-30 Zone and that the FHBM or FIRM will be modified accordingly; or

(c) An additional 60 days is required to make a determination.

§ 70.5 Letter of Map Amendment.

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of § 70.4(b), the Administrator shall issue a Letter of Map Amendment which shall state:

(a) The name of the Community to which the map to be amended was issued;

(b) The number of the map;

(c) The identification of the property to be excluded from a designated A, A0, A1-99, V0 or V1-30 Zone.

§ 70.6 Distribution of Letter of Map Amendment.

(a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Administrator.

(b) A copy of the Letter of Map Amendment shall be sent to the local map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.

(c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.

(d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.

(e) A copy of the Letter of Map Amendment shall be sent to the National Flood Insurers Association.

(f) A copy of the Letter of Map Amendment will be maintained by the Federal Insurance Administration in its community case file.

§ 70.7 Notice of Letter of Map Amendment.

(a) The Administrator shall publish a notice in the FEDERAL REGISTER that the FIRM for a particular community has been amended by letter determination pursuant to this part.

(b) The Administrator shall not publish a notice in the FEDERAL REGISTER that the FHBM for a particular community has been amended by letter determination pursuant to this part. The Letter of Map Amendment provided under §§ 70.5 and 70.6 serves to inform the parties affected.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1963), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[42 FR 56953, Oct. 31, 1977. Redesignated at 44 FR 31177, May 31, 1979]

NOTE: For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids Section of this volume.

§ 70.8 Premium refund after Letter of Map Amendment.

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in § 62.5 of this subchapter.

PARTS 71–74—[RESERVED]

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

Subpart A—General

Sec.
75.1 Purpose of Part.
75.2 Definitions.
75.3 Burden of proof.

Subpart B—Standards for Exemption

75.10 Applicability.
75.11 Standards.
75.12 Application by a State for exemption.

Sec.
75.13 Review by the Administrator.
75.14 States exempt under this Part.

AUTHORITY: Sec. 7(d), 79 Stat. 670 7(d); 42 U.S.C. 3535(d); and 42 U.S.C. 4128; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 41 FR 46991, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 75.1 Purpose of Part.

The purpose of this part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, A0, M, V, V0, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

§ 75.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 75.3 Burden of proof.

In any application made by a State to the Administrator for certification of its self-insurance plan, the burden of proof shall rest upon the State making application to establish that its policy of self-insurance is adequate and equals or exceeds the standards provided in this part.

Subpart B—Standards for Exemption

§ 75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, A0, M, V, V0 and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

§ 75.11 Standards.

(a) In order to be exempt under this Part, the State's self-insurance plan shall, as a minimum:

(1) Constitute a formal policy or plan of self-insurance created by statute or regulation authorized pursuant to statute.

(2) Specify that the hazards covered by the self-insurance plan expressly include the flood and flood-related hazards which are covered under the Standard Flood Insurance Policy.

(3) Provide coverage to state-owned structures and their contents equal to that which would otherwise be available under a Standard Flood Insurance Policy.

(4) Consist of a self-insurance fund and/or a commercial policy of insurance or reinsurance for which provision is made in statute or regulation and which is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, A0, M, V, V0, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of,

and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage which would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Administrator as A, A0, M, V, V0, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, A0, M, V, V0, and E Zones. The inventory shall: (i) Include the location of individual structures; (ii) include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and (iii) include an estimate of the anticipated annual loss due to flood damage.

(6) Provide the flood loss experience for State-owned structures and their contents based upon incurred losses for a period of not less than the 5 years immediately preceding application for exemption, and certify that such historical information shall be maintained and updated.

(7) Include, pursuant to § 60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, A0, M, V, V0, and E Zones.

(b) The Administrator shall determine the adequacy of the insurance provisions whether they be based on available funds, an enforceable commitment of funds, commercial insurance, or some combination thereof, but has discretion to waive specific requirements under this part.

§ 75.12 Application by a State for exemption.

Application for exemption made pursuant to this part shall be made by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in § 75.11.

§ 75.13 Review by the Administrator.

(a) The Administrator may return the application for exemption upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the self-insurance plan.

(b) Upon determining that the State's plan of self-insurance is inadequate, the Administrator shall in writing reject the application for exemption and shall state in what respects the plan fails to comply with the standards set forth in § 75.11 of this subpart.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in § 75.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the Administrator as A, A0, M, V, V0, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this Part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

(d) Documentation which cannot reasonably be provided at the time of application for exemption shall be submitted within six months of the application date. The Administrator may revoke his certification for a State's failure to submit adequate documentation after the six month period.

§ 75.14 States exempt under this Part.

The following States have submitted applications and adequate supporting documentation and have been determined by the Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Maine, Georgia, Oregon, and Florida.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974))

[43 FR 7141, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

PART 76—STATE ASSISTANCE PROGRAM FOR THE NATIONAL FLOOD INSURANCE PROGRAM

Sec.
76.1 Purpose.
76.2 Description of program.
76.3 Eligible applicants.
76.4 Administrative procedures.
76.5 General provision for cooperative agreement.
76.6 Ineligible tasks.

AUTHORITY: The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act 1973, 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943; Executive Order 12127, effective April 1, 1979, 44 FR 19367.

SOURCE: 45 FR 79072, Nov. 28, 1980, unless otherwise noted.

§ 76.1 Purpose.

(a) The State Assistance Program is designed to promote an intergovernmental flood hazard mitigation partnership by providing States with the opportunity to strengthen their role in NFIP flood hazard mitigation activities. The Program will provide individual States an opportunity to complement NFIP activities by developing, implementing, and evaluating approaches to accomplish NFIP objectives through State programs. It is intended that each State undertake activities consistent with its demonstrated capability in NFIP and flood hazard mitigation activities. The Program is designed to increase existing State capabilities as well as develop new ones. In turn, States will assist in increasing their communities' capabilities to develop, implement, and administer flood hazard mitigation measures.

(b) Adequate State participation in NFIP coordination and flood hazard mitigation activities is one of the best means available to ensure that the NFIP is effectively implemented at the local level. As more communities are converted to the Regular Program, greater demands are placed on States to assist their local communities in meeting NFIP requirements. Increased State involvement is necessary to help ensure the proper implementation and administration of NFIP flood plain management standards at the local level. Through the State Assistance Program, FEMA, in concert with individual States, will be able to provide quality community assistance.

§ 76.2 Description of Program.

The State Assistance Program is designed for all States which submit acceptable applications regardless of their present level of involvement or degree of expertise in NFIP and flood hazard mitigation activities. It is structured to recognize the fact that States have individual needs and different levels of sophistication in dealing with the NFIP. Thus, the State Assistance Program allows each State the flexibility necessary to develop its application to accommodate the unique characteristics of the State and its communities, and allows each State to undertake an appropriate level of effort.

(a) *Program Elements.* The State Assistance Program has been designed around three Program Elements: *Assessment, General Assistance and Public Information,* and *Community Services;* each encompassing its own general objective. Each objective for the State's project (the "Project Objective") chosen by the State shall be derived from one of the three general objectives defined under the Program Elements. The State shall then choose tasks that meet its chosen Project Objectives. The Program Elements are structured in order of increased levels of capability needed to accomplish their tasks. *Assessment* tasks demand the least capability; *Community Services* tasks demand the most capability. The State shall choose objectives and tasks from the Program Elements that are consistent with its demonstrated capability and develop a project designed to provide a foundation upon which to progress towards Program Elements requiring higher capabilities. Accomplishing the objectives of the Program Elements requiring less capability is a prerequisite for choosing elements requiring higher capability. A State's project may contain a mix of tasks chosen from among the different elements, provided the State "qualifies" for each element. In delineating a project, States shall choose Project Objectives and corresponding tasks that are derived from the following Program Elements:

(1) *Assessment.* The general objective of the *Assessment* element is to provide a State with the opportunity to examine and evaluate current State and local NFIP and flood hazard mitigation activities. A plan designed to expand the State's role in NFIP coordination and flood hazard mitigation activities will result. Its implementation will become the basis for future State Assistance Program funding. Generally, this element is designed for States which have not developed a formal State-wide hazard mitigation program and have been minimally involved in NFIP activities.

(2) *General Assistance and Public Information.* The general objective of the *General Assistance and Public Information* element is to provide a State with the opportunity to develop a Statewide information base and coordination network. Under this element States will promote an increased understanding of the NFIP and its concepts and provisions, develop information dissemination and retrieval systems, and create approaches to maximize the coordinated use of Federal and State resources for flood hazard mitigation.

(3) *Community Services.* The general objective of the *Community* Services element is to provide States with an opportunity to work closely with local government officials in the mechanics of implementing and administering flood hazard mitigation programs. The tasks are designed for States which have already demonstrated a leadership role through strong State flood hazard mitigation laws, programs, and policies.

(b) *Funding Approach.* Each State will be provide a target funding figure which is based on an objective formula. Each State will then develop an application using the target figure to guide the scope of work. Both the scope of work and the funding figure provided to FEMA will be subject to negotiation. To be funded, each application must provide for new or substantially expanded activities. The State Assistance Program is not intended to provide funds for on-going state activities in related areas of planning or technical assistance. Furthermore, any subcontracting must be justified as to how it meets the objectives of the Program.

(1) *Apportionment Formula.* Each State will be targeted for an amount of assistance funds determined by an objective formula. An apportionment formula has been developed to guarantee a fair share of the Program's funds to each State interested in assistance. The formula weighs data for each State reflecting the magnitude of lives at risk to flood hazards, the extent of flood hazard within communities, development pressures and historical flood damage.

(2) *Formula Factors.* The four factors used to derive a percentage of the total State Assistance Program's fiscal year funds for each State include: Population in Special Flood Hazard Areas; Number of Communities Participating in the Regular Program of the National Flood Insurance Program; Total Increase in Households from Census Bureau Data; and, Flood Damages by National Flood Insurance Program Flood Insurance Claims. The first factor, Population in Special Flood Hazard Areas, reflects the magnitude of lives at risk in flood hazard areas in each State. The second factor, Number of Communities Participating in the Regular Program, relates to priorities established by FEMA Regional Offices for flood hazard mapping pur-

poses. Study priorities generally are based on the severity of flooding and damage potential in each community. The third factor, Total Increase in Households, indicates which States are experiencing increasing development pressures which may increase flood risks. The fourth factor, Flood Damage by National Flood Insurance Program Flood Insurance Claims, weighs the relative historical flood damage sustained by each States. All factors are weighted equally.

(c) *Application Evaluation Criteria.* All State applications will be evaluated as to how well they meet the following critera:

(1) *Objectives expressed*—specific and clearly stated objectives which relate to the national objectives of the State Assistance Program;

(2) *Needs*—explanation and understanding of the needs to be addressed by the tasks;

(3) *Tasks defined*—clear and cogent definitions of the tasks to be undertaken;

(4) *Implementation*—description of how these tasks will be accomplished, the approaches used to achieve the objectives, and the results, products and benefits expected to be derived from each task;

(5) *Coordination*—explanation of a plan of coordination with FEMA programs and offices, other federal agencies and other state agencies and programs;

(6) *Capacity*—demonstration of an acceptable level of performance in dealing with the NFIP to undertake more sophisticated tasks covered in the *General Assistance and Public Information* and *Community Services* elements.

(7) *Sustainability*—demonstration of the extent to which a state will be able to integrate NFIP standards into the overall framework of state and community planning and development activities to achieve maximum sustainability.

(8) *Consistency*—with FEMA programs and policies, particularly the NFIP.

(9) *State Evaluation* component—definition of an evaluation system for the State's project which includes:

(i) Clearly stated *objectives.*

(ii) *Tasks* to be undertaken.

(iii) *Performance indicators* (quantifiable expressions of the project objectives).

(iv) *Performance standards* (desired level of achievement for a performance indicator.

(v) *Data sources* (base from which information about performance indicators can be obtained).

(vi) *Narrative comments* addressing what other impacts the project had, problems encountered, the overall success of the project, etc.

(10) *Organizational Qualifications*—current and previous experience in related projects of comparable scope, preferably demonstrated knowledge in dealing with the NFIP.

(11) *Project Management and Workplan*—demonstration of an appropriate project management and work plan.

(d) *Supplemental Projects*—(1) *General.* Each State's application for the target amount of funding may contain a supplement proposing innovative tasks involving an additional level of effort than that proposed in the principal application and requesting an additional level of funding. The task(s) proposed in the supplemental application must be related in scope to the effort proposed in the principal application. An innovative task may take any of several forms. It may be a product, process, an organizational arrangement or technique. Each innovative task should encompass a concept that is untried, unique, and/or advances the state of the art of flood hazard mitigation. Proposed tasks which have been undertaken before or are in use at the present may be considered for demonstration if the application identifies and addresses the question of the special nature or circumstances surrounding the proposed task which would warrant its consideration for funding as a supplemental project.

(2) *Application Procedure.* Requests for funding of supplemental tasks must be identified separately as an addendum to the principal application for the target amount of funding. The supplemental application must be submitted concurrently with the principal application. In addition, the supple-

mental application must include the items required in § 76.4(c)(3) (iii)-(viii), discussed below, which constitutes the documentation for the supplemental request. The supplemental application will be evaluated separately from the principal application. All requests for supplemental funding of tasks will be presented to the Federal Insurance Administrator at one time so that priorities may be weighed and funds may best be distributed.

(3) *Review Criteria.* Each task proposed for supplemental funding must be justified specifically as to how it meets the following criteria:

(i) The unique capabilities, related experiences, facilities or techniques and the commitment which the applicant possesses and offers for achieving the objectives of the task.

(ii) The extent to which the identified problem is common to a substantial number of States and the proposed approach can be adopted and replicated in a number of other States.

(iii) The overall technical merit of the proposed tasks including the specific impacts of the innovation.

(iv) The availability of supplemental funds for innovative tasks in light of competing needs.

§ 76.3 Eligible applicants.

Each State, the District of Columbia, Puerto Rico, the Virgin Islands and Guam are eligible to participate in the State Assistance Program. The Governor of each State and representative of the District of Columbia, Puerto Rico, the Virgin Islands and Guam have been requested by letter to designate a lead agency to coordinate projects under the State Assistance Program and to receive a Request for Application for the State Assistance Program. The designated lead agency will be considered the State Coordinating Agency for purposes of the National Flood Insurance Program.

§ 76.4 Administrative procedures.

(a) *Size of award.* The amount of each award will be determined by the objective apportionment formula set forth in § 76.2(b) of this part. Each applicant should, therefore, submit an application within the range of its target amount derived from the apportionment formula which will be provided to each applicant in the Request for Application letter.

(b) *Project period.* The typical project period will be twelve months.

(c) *Submission procedures.* Each applicant shall comply with the following submission procedures:

(1) *Issuance of Request for Application.* Each designated State agency will receive a Request for Application package from the State's respective Federal Emergency Management Agency Regional Director.

(2) *How to submit.* Each State shall submit the original application and three copies to its respective Federal Emergency Management Agency Regional Office.

(3) *Application package.* The application package for the State Assistance Program shall consist of the following:

(i) A letter of transmittal signed by the chief executive officer of the State or the designated State agency.

(ii) A copy of the Agreement Articles for Cooperative Agreement.

(iii) Standard Form 424, Federal Assistance, prescribed by OMB Circular No. A-102. (Non-construction, long-form)

(iv) A detailed Program Narrative Statement developed according to the Special Instructions provided as part of the Request for Application package provided to the States.

(v) Budget information on OMB Form 80-R0186.

(vi) Standard Form 270 "Request for Advance or Reimbursement," as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(vii) A copy of A-95 review comments or documentation of no comment and full review period.

(viii) A copy of Assurances as required by the FEMA General Provisions for Cooperative Agreement (provided to each State as part of the Request for Application package).

(ix) Any other information transmitted in the Request for Application which is requested as part of the application package.

(d) *Reporting requirements*—(1) *Project Performance Reporting Require-*

ments. Each State shall submit a narrative evaluation of its level of achievement of project objectives. Each State shall report actual levels of performance standards achieved for project objectives against levels expressed by the State as desirable in its application. In addition, each State shall compare percentage of tasks accomplished against percentages projected for each month in the State's application. These narrative reports shall be submitted at intervals specified in the Agreement Articles for Cooperative Agreement.

(2) *Financial Reporting Requirements.*

(i) Standard Form 270 "Request for Advance or Reimbursement" is the voucher form to be submitted for all bills for reimbursement.

(ii) Standard Form 272 "Federal Cash Transactions Report" must be submitted each reporting period.

(iii) Standard Form 269 "Financial Status Report" must be submitted each reporting period.

(iv) A narrative report projecting the percentage of cost expanded per task by month must be submitted each reporting period.

(3) *Project Completion Reporting Requirements.* At the conclusion of the project the State must submit the following:

(i) Final Standard Forms 272 and 269.

(ii) A narrative report which includes an analysis of the project's success in achieving the Project Objectives.

(e) *Agreement Articles for Cooperative Agreement under the State Assistance Program.* The Agreement Articles shall be the basic terms to which the State and FEMA agree. The Agreement Articles shall become part of the Cooperative Agreement.

§ 76.6 General provisions for cooperative agreement.

The legal funding instrument for the State Assistance Program for the National Flood Insurance Program shall be cooperative agreement. All States will be required to comply with FEMA General Provisions for Cooperative Agreement. The General Provisions for Cooperative Agreement shall be provided to the States as part of the Request for Application Package. The General Provisions shall become part of the Cooperative Agreement.

§ 76.6 Ineligible tasks.

The following is a list of tasks which are ineligible tasks. This list of examples of ineligible tasks is merely illustrative and does not constitute a list of all ineligible tasks.

(a) *Public works, facilities and site or other improvement.* The general rule is that public works, facilities and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated or installed.

(b) *Purchase of equipment.* The purchase of equipment is generally ineligible.

(c) *Analysis of NFIP or its products.* Tasks choices in no way analyze or recommend changes to the NFIP or its products. For example, proposed tasks shall not duplicate or potentially conflict with hydrologic and hydraulic engineering activities performed by the Federal Insurance Administration.

(d) *Flood Insurance Studies.* Flood Insurance Studies shall not be conducted under the State Assistance Program.

(e) Any task which is not within the general scope of the State Assistance Program's objectives.

PART 77—ACQUISITION OF FLOOD DAMAGED STRUCTURES

GENERAL PROVISIONS

§ 77.1 Definitions.

(a) Definitions found in § 59.1 of this subchapter are applicable to this section.

(b) Furthermore, the following definitions are established:

Damaged Substantially Beyond Repair—means where (a) damages to the improved real property are such that as a condition of repair as imposed by a state or local government, the structure must be elevated or floodproofed to or above the 100-year flood elevation, or (b) damages to the improved real property equals or exceed 50 percent of the structure's fair market or actual cash value, whichever is less, or (c) where damages to the improved real property are such that repair is physically impossible or infeasible.

Flood Risk Area—See definition for *Special Hazard Area* in § 59.1, or other area subject to flooding as determined by the Administrator.

Significantly Increased Construction Cost—occurs when a specific State or local statute, ordinance, or code requires that improvements be made to a structure as a condition of the repair of damages sustained, such that the actual cost of repair would be greater by 25 percent than the cost which would be required for repair of the damages only.

Sound Land Management and Use—The process wherein the governmental body responsible for land use regulation in a political jurisdiction plans and regulates the use of land within its jurisdiction in order to promote the reduction of property exposure to flood hazard and the protection of environmental values of flood plains. Sound use of land acquired by FEMA and transferred to local governments pursuant to Section 1362 of Pub. L. 95-128 is use for primarily open space and recreational purposes to minimize potential for any future flood damage, with a general prohibition of enclosed structures unless functionally dependent for some recreational or open space use. The criteria set forth in paragraphs (d)(i)-(iv), of this section and restrictions to be placed in deeds used to convey title to real property from the Federal Government to local governments will set forth more specific requirements to be used in determining what constitutes sound Land Management and Use for individual land parcels.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367); and delegation of authority to Federal Insurance Administrator)

[45 FR 50282, July 28, 1980]

§ 77.2 Criteria for acquisition.

(a) The objectives of the Flooded Property Purchase Program under the National Flood Insurance Program are:

(1) To reduce future flood insurance and disaster assistance costs by removing repetitively and/or substantially damaged structures from flood risk areas;

(2) To provide an opportunity for owners of repetitively and substantially damaged structures to be permanently removed from flood risk areas, and to reduce risk to life from flooding; and

(3) To complement Federal, State and local efforts to restore flood plain values, protect the environment and provide recreational and open space resources.

(b) The Administrator will, when he or she deems it to be in the public interest, enter into negotiation with property owners whose improved real property has been damaged by flooding for the purpose of purchasing such buildings and associated land or lot for transfer by sale, lease, or donation to a community when the following conditions are met:

(1) The property must be located in a flood risk area as determined by the Administrator;

(2) The property must have been covered by a flood insurance policy under the National Flood Insurance Program at the time damage took place.

(3) The building, while covered by flood insurance under the National Flood Insurance program, must have been damaged substantially beyond repair or must have been damaged not less than three previous times during the preceding five year period, each time the cost of repair equalling 25 percent or more of the structure's value, or must have been damaged from a single casualty of any nature so that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at significantly increased cost.

(4) A state or local community must enter into an agreement authorized by ordinance or legally binding resolution to take title to and manage the prop-

erty in a manner consistent with sound land managment use as determined by the Administrator.

(5) The community must agree to remove without cost to the Federal Emergency Management Agency (FEMA), by demolition, relocation, donation or sale any damaged structures to which the community accepts title from FEMA, provided the Administrator may, when it is in the public interest to do so, agree to assume a part or all of the cost of such removal.

(c) Title to the real property acquired by FEMA shall be conveyed to local communities subject to specific restrictive covenants, conditions and agreements which will run with the land and be binding on subsequent successors, grantees and assigns. These restrictive covenants, conditions and agreements will be recited in the deed a community receives from FEMA and the community shall join in the execution of the deed.

(d) The general criteria from which specific deed restrictions will be developed may include, among other things, that:

(1) The land must be dedicated in perpetuity for open space purposes, or such other purposes as the Administrator may agree are consistent with the objectives set forth in § 77.2 (a)(1)-(3) of this part; that the community shall faithfully manage the land for its dedicated purposes; that the community shall not erect or permit to be erected and structures or other improvements on the land unless such structures are, except for restrooms, open on all sides and functionally related to a designated open space use without the prior approval in writing of the Administrator; and that the community shall not permit any use which will create a threat to human life from flooding.

(2) In general, allowable open space uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved parking lots, buffer zones, or open space areas that are part of Planned Unit Developments (PUD's). Structures functionally related to these uses are open-sided picnic and camping facilities, kiosks and refreshment stands or nonhabitable, elevated or floodproofed service structures associated with a marina.

(3) The rights to enforce the restrictive covenants shall be assigned to the Federal Insurance Administrator as assignee, together with a declaration that any future violation of the restrictive covenants or agreements, delivered in writing to the Chief Executive Officer within thirty (30) days from the date the Administrator receives actual notice of the violation, shall be deemed, at the Administrator's option, to cause a reversion of title to FEMA; and

(4) The property shall be transferred subject to zoning and building laws and ordinances; easements, agreements, reservations, covenants and restriction of record; any state of facts an accurate survey might show; encroachments and variations from the record lines of hedges, retaining walls, sidewalks and fences;

(e) Any structures, as described at paragraph (d)(2) of this section, and built in accordance with the deed restrictions shall be floodproofed or elevated to withstand the effects of the 500 year or .02 percent chance flood.

(f) Appraisals for the determination of compensation for flood damaged real property will be undertaken in conformance with the "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Interagency Land Acquisition Conference, GPO (1973). Appraisals will reflect the adjusted (for time) pre-damage fair market value (FMV) of the structure and land to the extent that this FMV may have been reduced or depressed in the open market as a result of flooding. Actual compensation of FMV will be inclusive of any flood insurance claim payments made or to be made as a result of the most recent flood event to the extent that repairs have not yet been made.

(g) Agreement to sell real property on the part of owners will be completely voluntary. No property owners will be required to sell their properties under Section 1362.

(h) Relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.) is not available to property owners who sell their properties under Section 1362.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367); and delegation of authority to Federal Insurance Administrator)

[45 FR 50282, July 28, 1980]

PARTS 78–79—[RESERVED]

FEDERAL CRIME INSURANCE PROGRAM

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

Sec.
80.1 Definitions.
80.2 Description of program.
80.3 Operation of program and inapplicability of State laws.
80.4 Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal crime insurance.
80.5 Duties of servicing companies.
80.6 Name and address of servicing company.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 36 FR 24769, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 80.1 Definitions.

(a) As used in this subchapter and in the crime insurance policies issued by the Federal Insurance Administrator, unless otherwise defined in the text of such policies—

(1) The following terms shall be defined as set forth in § 55.1 of this chapter: Act, Administrator, Binder, Person, Property owner, Director, State and State insurance authority;

(2) "Adjuster" means any person engaged in the business of adjusting loss claims arising under property insurance policies issued by an insurance company. The term also includes the staff adjusters of servicing companies;

(3) "Affordable rate" means such premium rate as the Director determines would permit the purchase of a specific type of insurance coverage by a reasonably prudent person in similar circumstances with due regard to the costs and benefits involved. For the purposes of the sale of Federal crime insurance, the rates set forth in Part 83 of this chapter shall be deemed affordable;

(4) "Agent or broker" means any person authorized to engage in the property insurance business as an agent or broker under the laws of any State;

(5) "Crime insurance" means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in Part 83 of this chapter and in the various crime insurance policies issued by the insurer. The term does not include automobile insurance or losses resulting from embezzlement;

(6) "Deductible" means the fixed amount or percentage of any loss not covered by an insurance policy. The amount of the deductible must be exceeded before insurance coverage takes effect;

(7) "Eligible premises" means a property eligible for crime insurance coverage under one or more of the types of policies described in Part 83 of this chapter;

(8) "Insurance company" means any property insurance company, or group of companies, authorized to engage in the insurance business under the laws of any State;

(9) "Insurer" means the Federal Insurance Administrator, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472.

(10) "Policyholder premium" means the total insurance premium payable by the insured for the coverage or coverages provided under any insurance policy;

(11) "Program" means the Federal crime insurance program authorized

by title VI of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, Dec. 31, 1970), set forth principally in 12 U.S.C. 1749bbb-10a, et seq.;

(12) "Protective device" means any structural, mechanical, electrical, chemical, or other physical obstacle or device that can be utilized by a property owner to prevent or deter crime or to minimize losses;

(13) "Protective measure" means any protective device or other measure or procedure employed to prevent or deter crime or to minimize losses; and

(14) "Servicing company" means an insurance company or other organization that has entered into an agreement with the insurer to issue and service Federal crime insurance policies on the insurer's behalf in one or more States or areas eligible for the sale of such insurance.

(b) Technical or trade terms used in this subchapter or in the crime insurance policies issued by the Federal Insurance Administrator and not otherwise defined therein shall be deemed to have the most general meaning they have in the standard crime insurance policies providing similar coverages issued by private insurance companies.

§ 80.2 Description of program.

(a) Title VI of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, approved Dec. 31, 1970) authorizes the Director of the Federal Emergency Management Agency on and after August 1, 1971, to make crime insurance available at affordable rates in any State in which a critical market unavailability situation for crime insurance exists that has not been met through appropriate State action. The Director is directed to conduct a continuing review of the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law. The Director's basic authority under this title has been delegated to the Federal Insurance Administrator.

(b) The purpose of the delayed effective date for the Federal program is to give the private property insurance industry and the State insurance authorities an opportunity to solve the crime insurance unavailability problem through the establishment of appropriate programs under the authority of State law. Where adequate State solutions to the price and market problems are adopted, Federal crime insurance will not be sold.

(c) In States where the sale of Federal crime insurance is undertaken, policies will initially be sold primarily through agents and brokers licensed to engage in the insurance business within the State for which the policy is written. Policies may also be purchased from the appropriate servicing company.

(d) Lists of States designated as eligible for the sale of Federal crime insurance will be published from time to time in § 81.1 of this chapter, subject to periodic revisions pursuant to determinations by the Federal Insurance Administrator that a critical crime insurance market unavailability or prohibitive cost situation exists in a particular State, or that the standard lines of crime insurance have become available at affordable rates either through a suitable State program or through the private insurance market.

§ 80.3 Operation of program and inapplicability of State laws.

(a) The crime insurance program authorized by the Act is a direct Federal program, and its operations, receipts, and funds are exempt from any form of Federal, State, or local taxation in accordance with section 1250 of the Act (12 U.S.C. 1749bbb-20). In carrying out the program, the Administrator is authorized to define terms (section 1203 (b); 1749bbb-2(b)), to issue regulations (section 1247; 1749bbb-17), to establish premium rates (section 1233; 1749bbb-10c), to prescribe terms, conditions, and limits of coverage (section 1231(b); 1749bbb-10a(b)), and to make use of the existing facilities and services of insurance companies, agents, and brokers as fiscal agents of the United States (section 1232; 1749bbb-10b).

(b) No Federal crime insurance policy issued by or on behalf of the insurer shall be subject to any State or local tax or insurance law or regulation, nor shall any agent, broker, or servicing company be subject thereto with respect to any monies received or action taken in providing insurance to the public under the authority of this subchapter; and no insurance policy shall be written by any agent, broker, or servicing company in the name or on behalf of the insurer in any form, or on terms and conditions, or with limits of coverage, or at premium rates, other than those then currently prescribed by the insurer. Failure by any insurance company, broker, or agent to comply with this requirement may result in the immediate suspension or debarment of the violator from any further participation in the program.

(c) Nothing in this § 80.3 shall be construed as authorizing or denying any State or subdivision thereof the right to impose any income or other tax on fees, commissions, or profits earned by agents, brokers, or servicing companies solely for their own account.

§ 80.4 Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal crime insurance.

(a) The insurer hereby offers to pay to an eligible State licensed property insurance agent or broker a commission in an amount equal to the specified percentage of the applicable policyholder premium with respect to each Federal crime insurance policy procured for an eligible applicant in accordance with the provisions of this subchapter. The actual submission of a valid and complete application, together with the applicable premium, resulting in the issuance of a policy to an eligible insured, all on approved forms and in accordance with the provisions of this subchapter, shall be deemed an acceptance of this offer subject to avoidance from the inception of the policy in the event of fraud or misrepresentation and to cancellation by the insurer (for any of the reasons set forth in § 81.7 of this chapter) or by the insured, and provided the agent or broker promptly submits the application and transmits the gross amount of the policyholder premium then due to the insurer and complies with respect to such policy, with any additional procedural requirements the insurer may then have imposed. It shall be a further condition of this offer that the agent or broker must certify on the application that any duties set forth in the application have been fully carried out. The amount of the commission shall be prorated in the event of the cancellation of any validly issued policy, and the agent or broker shall repay to the insurer the amount of any unearned commission in excess of the minimum annual commission applicable to the then current term of the policy resulting from any such cancellation. Premiums must be paid by a check or money order made payable to the Federal Crime Insurance Program, and no agent or broker shall cause any applicant to make any Federal crime insurance premium payable to anyone other than the Federal Crime Insurance Program.

(b) Commissions earned by eligible agents and brokers under the authority of paragraph (a) of this section shall be paid to them in a lump sum by the insurer either monthly or on such other equitable basis as the insurer may approve.

(c) Subject to a minimum annual commission of $15 on each commercial policy and $5 on each residential policy, the specified commission percentages of the policy holder premium for both residential and commercial insurance coverages shall be the following: Initial policies, territory 01, 16 percent; 02, 15 percent; 03, 14 percent; and for all renewal business, the commission shall be 12 percent. The renewal commission rate shall apply to any property that has previously been insured under the Program unless the lapse of time since the termination of the previous policy is in excess of 1 year: Provided, that the commission for any such renewed policy shall be deemed payable only to the agent or broker, if any, who wrote the policy. A change of broker at other than an anniversary date must be accomplished by submission of a new application with applicable premium and cancellation of the previous policy.

(d) No service, placement, or other fee of whatsoever nature shall be charged by any agent, broker, or servicing company to any applicant or property owner under the Program as a condition of placement or for service on an existing policy; nor shall any applicant be compelled to purchase any other services or merchandise as a condition for having his application submitted. No fee may be collected, retained or shared by any agent or broker for the reporting or adjustment of any Federal crime insurance claim.

(e) For the purposes of this offer, an eligible agent or broker means an agent or broker who is at the time of making application for the policy and at the time of subsequent renewals, licensed and authorized to act as a property insurance agent or broker with respect to the State where the insured premises are located and who has not been suspended or debarred by the insurer. Such agent or broker is the agent or broker of the insured and is not an agent of the Federal government nor any Federal agency, except as otherwise expressly provided herein. An eligible applicant is one whose premises to be insured are located in a State then currently designated as eligible for the sale of Federal crime insurance in § 81.1 of this chapter.

(f) Insureds will be billed directly by the insurer for all installment and renewal payments and insureds should make payment by check or money order payable to the Federal Crime Insurance Program and mail such payment to the insurer and not to the agent or broker. But, nevertheless, in the event that an insured makes a timely installment payment of the current premium (after the initial payment submitted with the application) to any agent or broker, proof submitted by the insured, the agent or the broker of the timely receipt by the agent or broker may be deemed by the Administrator to be proof of timely payment to the insurer so that the insured will not be penalized because of an error or omission on the part of the agent or broker in forwarding the payment to the insurer.

(g) Neither this § 80.4 nor any acceptance of this offer shall be deemed to confer upon any agent or broker any authority to act for, represent, or bind the insurer or the United States except as otherwise expressly provided herein.

(h) Failure of any person to comply with any provision of these regulations may result in the immediate suspension or debarment of the violator from any further participation in the Program.

[45 FR 41950, June 23, 1980]

§ 80.5 Duties of servicing companies.

(a) The general duties of servicing companies shall be as set forth in this § 80.5, subject to the provisions of the actual contracts entered into with such companies by the insurer.

(b) Except as otherwise required by their contracts with the insurer, servicing companies shall:

(1) Provide information to eligible property owners and to interested agents and brokers within the servicing area;

(2) Provide crime insurance manuals to eligble agents and brokers within the servicing area;

(3) Supply application forms and notice and proof of loss forms to eligible agents and brokers and to prospective applicants on request;

(4) Maintain, control, and account for applications for insurance received from eligible agents, brokers, and applicants;

(5) Verify the eligibility of applicants for the coverages sought;

(6) Issue policies only on forms prescribed and supplied by the insurer, or else promptly notify applicants (through the appropriate agent or broker, if any) of ineligibility;

(7) Deposit the applicant's premium check in a special bank account. If no policy is issued, refund the amount of the premium to the applicant through the agent or broker, if any;

(8) Issue periodic commission payment checks to cooperating agents and brokers;

(9) Provide statistical and accounting records, coding, and reports, in hard copy and machine-readable forms, as specified in the insurer's statistical plan and accounting instructions, and as may be specifically re-

quested by the insurer, all in timely fashion;

(10) Receive, control, and account for all crime insurance claims submitted within its servicing area;

(11) Verify claims data and existence of required protective devices, adjust losses as required by insurer through an impartial selection of adjusters, and promptly pay all valid claims;

(12) Bill policyholders directly at least 30 days in advance of due dates, and send a copy of each premium or renewal notice to the agent or broker of record, if any;

(13) Periodically obtain updated applications or certifications from insureds for verification and incorporation in statistical and accounting records.

[36 FR 24769, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980]

§ 80.6 Name and address of servicing company.

The following company has been designated to act as servicing company for the Federal crime insurance program: Safety Management Institute, Federal Crime Insurance, P.O. Box 41033, Washington, D.C. 20014. SMI's toll-free number is 800-638-8780. In Washington, D.C. metropolitan area call 652-2637. In Maryland, outside the Washington, D.C. metropolitan area, and in Puerto Rico and the Virgin Islands the toll-free number is 800-638-6830.

[43 FR 50428, Oct. 30, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980]

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Sec.
81.1 States eligible for the sale of crime insurance.
81.2 Eligibility requirements applicable to property owners.
81.3 Use of prescribed forms required.
81.4 Terms and conditions of policy to govern.
81.5 Where to purchase coverage.
81.6 How to report claims.
81.7 Cancellations, modifications, and renewals of coverage.
81.7a Cancellations in order to renew.
81.8 Inquiries and complaints.
81.9 Penalties for false statements.
81.10 Nondiscrimination.

Authority: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

Source: 36 FR 24771, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 81.1 States eligible for the sale of crime insurance.

(a) In accordance with section 1231 of the Act (12 U.S.C. 1749bbb-10a), the Administrator has reviewed the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law.

(b) On the basis of the information available, the Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and the states set forth in this paragraph has an unresolved critical market availability situation that requires the operation of the Federal Crime Insurance Program therein as of November 1, 1980. Accordingly, the program is in operation in the following jurisdictions:

Alabama
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Illinois
Iowa
Kansas
Maryland
Massachusetts
Minnesota
Missouri
New Jersey
New Mexico
New York
North Carolina
Ohio
Pennsylvania
Rhode Island
Tennessee
Virginia
Washington
Wisconsin
Puerto Rico
Virgin Islands

(c) If any of the States listed in paragraph (b) of this section, after the effective date of this subchapter, adopts a suitable program under State law to make the standard lines of crime insurance available within that

State at affordable rates, or if such insurance becomes generally available through the normal insurance market at affordable rates, then in either case the eligibility of such State for the subsequent sale of crime insurance under the Program will be promptly terminated by the insurer.

(d) Notwithstanding the provisions of § 81.7, Federal crime insurance policies in force at the time a State is determined to be ineligible for further participation in the program shall thereupon be terminated upon 30 days' written notice to the policyholder effective on the next 6-month anniversary date of the policy, and no further coverage for such policyholder with respect to premises located in such State shall thereafter be written unless the State again becomes eligible under the program.

(Sec. 7(d), 70 Stat. 670; 42 U.S.C. 3535(d); Sec. 1103, 82 Stat. 466, 12 U.S.C. 1749bbb-17)

[36 FR 24771, Dec. 22, 1971, as amended at 44 FR 36028, June 20, 1979. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 67667, Oct. 14, 1980]

§ 81.2 Eligibility requirements applicable to property owners.

(a) To be eligible for the purchase of Federal crime insurance under the program, a property owner or tenant must:

(1) Apply separately for coverage for each eligible premises within an eligible State and personally sign each application, either on the application form itself or on any applicable amendatory endorsement, or both, as the insurer may require;

(2) Pay the annual premium or six-month premium installment at the time of application. Coverage will commence in accordance with §§ 83.5 and 83.25a.

(3) Agree to permit inspections of the insured premises by the insurer or his representative at any reasonable time or times; and

(4) Agree to report to law enforcement authorities all crime losses of property covered under each policy, whether or not a claim is filed.

(b) Failure to comply fully with the requirements of paragraph (a) of this section may result in the avoidance, cancellation, or nonrenewal of coverage, as set forth in § 81.7.

(c) Any false statement in the application or in connection with any claim submitted under the Program may, without limitation of any applicable statute, void the policy and result in the denial of such claim in its entirety.

[36 FR 24771, Dec. 22, 1971, as amended at 43 FR 4008, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980]

§ 81.3 Use of prescribed forms required.

No Federal crime insurance is authorized to be written under the program on any form other than the form prescribed by the insurer for the type of coverage involved. Any insurance policy purportedly issued on behalf of the insurer or any other form shall not be binding upon the insurer and shall not confer any liability upon the insurer by reason of any act or representation of the agent, broker, or servicing company in illegally causing such policy to be issued.

§ 81.4 Terms and conditions of policy to govern.

(a) Except as otherwise specifically provided by this subchapter, the respective rights and duties of the insurer and the insured shall be as set forth in the prescribed application form and the prescribed policy form. All purchasers of Federal crime insurance shall be deemed to have knowledge of the terms and conditions of coverage set forth in such policies and in this subchapter. Although the insurer will endeavor to provide actual notice of policy changes through the appropriate servicing company, modifications of this subchapter that are made during the term of an existing policy shall automatically become applicable to the policy at the time of its next renewal. All Federal crime insurance policies shall be issued for a term of 1 year, subject to semiannual premium payments.

(b) The rights of the insurer to require inspections of the insured premises, production of books and records, appraisals of damaged property, subrogation in the event of payment, and prompt notice in the event of loss, shall be as specified in the prescribed policy, of which the application forms a part. The rights of the insured with respect to the coverages provided, extensions of coverage outside the insured premises or with respect to other persons, limits of such coverages, appraisals, cancellations, and judicial review shall be as set forth in the prescribed policy.

(c) Changes in the provisions of this subchapter which broaden or liberalize the coverages being provided under the prescribed policy forms, but do not require any additional premium to be charged, shall be applicable to all existing and future policies of insurance as of the date of their adoption, without the necessity of endorsement.

(d) Changes in premium rates shall apply to outstanding policies only upon the next renewal date that occurs 45 days or more after the effective date of the rate change.

[36 FR 24771, Dec. 22, 1971, as amended at 37 FR 15297, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 81.5 Where to purchase coverage.

Subject to the provisions of this subchapter, Federal crime insurance coverage may be purchased from any property insurance agent or broker authorized to do business in the State in which the premises to be insured are located, or directly from the appropriate servicing company.

§ 81.6 How to report claims.

Losses under a Federal crime insurance policy which exceed the applicable deductible may be reported either to the agent or broker through whom the application was submitted, or directly to the servicing company designated for the area in which the loss occurs. The claimant will be required to report all pertinent information, including a description of the loss, time, place, ownership, manner of acquisition, cost, depreciation, current value, amount of claim, and whether the insured has incurred previous losses under the policy. A sworn proof of loss statement must be submitted to the adjuster or servicing company that processes the claim.

§ 81.7 Cancellations, modifications, and renewals of coverage.

(a) Unless coverage has previously been canceled or renewal is refused by the insurer for one or more of the reasons set forth in this part, each property owner within an eligible State who is validly insured under any policy or policies of insurance issued under the Federal crime insurance program shall be entitled to renew (i.e., to purchase the then current and applicable form of crime insurance) coverage upon the expiration of such existing policy or policies. The renewal shall be subject to the rules, regulations, and policy terms, conditions, and rates then in effect.

(b) A renewal notice will be sent by the servicing company to the insured at least 30 days prior to the expiration date of each policy. Insureds renewing policies shall be furnished with such additional forms, if any, as the insurer may require in order to obtain current information pertaining to the risk. Any such form must be completed and returned by the insured with the premium. The 6-month premium installment then due, together with the insured's certification as required, must be received by the servicing company not later than the expiration date of the previous policy in order to prevent a lapse in coverage. If timely payment is received, no new policy will normally be issued, and an eligible insured's check or receipt shall constitute his proof of payment. However, if timely payment is not received, or if substantial changes have been made in the regulations or provisions governing the pertinent crime insurance coverage during the term of the insured's previous coverage, a new policy in its entirety may be issued. Reinstatement of lapsed policies by servicing companies shall not be permitted.

(c) Changes in coverage or limits of coverage may be made at any time upon submission of a new application with the applicable semi-annual premium. If the ownership of an insured premises is changed, the new owner must submit a new application with the applicable semi-annual premium. Policy coverage ceases at the time of ownership change and a policy may not be transferred or assigned to a new owner or tenant except by submission of a new application. Policy coverage ceases at the time of any change in the ownership of or insurable interest in the premises specified in the application. Upon receipt of information indicating that such a change in ownership or insurable interest has occurred, the insurer shall issue a notice of cancellation effective the date of such change. Return of premium on a cancelled policy shall be on a pro rata basis when such cancellation is made for the purpose of changing address or coverage or limits of coverage or for purchasing crime insurance coverage in the private insurance market. Short-rate cancellation procedures shall be applicable to any other cancellation during the term of any policy.

(d) Notwithstanding any unqualified cancellation provisions contained in the prescribed policy forms, the insurer hereby limits his right to cancel, or to refuse to renew coverage, to the following grounds:

(1) Any nonpayment of premium, (2) fraud or misrepresentation in the application or upon any renewal of coverage, or in connection with either, (3) fraud or misrepresentation in connection with the submission of a claim, (4) the use of the insured premises with the knowledge of any insured for any illegal activity, or (5) any other substantial failure to comply with the provisions of this subchapter or of the insurance policy, as determined by the insurer and stated in its notice of cancellation. Cancellations on any of the grounds in paragraph (d) (2), (3), or (4) of this section may, at the discretion of the insurer, be made retroactive to the date of the first known wrongful act. Refunds of unearned premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agents' commissions in prior years, if any) in connection with the issuance of the policy and any inspections of the applicant's premises. Except as provided by § 82.4 of this chapter, cancellations by the insurer on the basis of paragraph (d)(5) of this section or as provided by paragraph (e) of this section, shall be upon 30 days' written notice, and the insured shall be entitled to a short-rate refund or unearned premium, if any.

(e) Willful or repeated failures of an insured to report to law enforcement authorities any losses of property covered under the policy, as required by § 81.2(a)(5), may be deemed by the insurer to warrant cancellation of coverage upon 30 days' written notice. However, such failure may be waived by the insurer prior to cancellation for good cause shown.

(f) No property owner whose Federal insurance coverage has been canceled (whether from inception or after notice) or for whom the insurer has refused to renew coverage, for any of the reasons in paragraphs (d) (2), (3), (4), or (5) of this section or under paragraph (e) of this section, shall be eligible for any further insurance under the program except upon the written waiver of the Administrator, granted for good cause shown. If granted, the waiver of ineligibility must be presented to the appropriate agent, broker, or servicing company by the property owner within 30 days of the date it is granted, and a copy thereof shall be made a part of the property owner's application and shall be incorporated as part of any policy subsequently issued.

[36 FR 24771, Dec. 22, 1971, as amended at 37 FR 15297, July 29, 1972; 43 FR 4008, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980]

§ 81.7a Cancellations in order to renew.

(a) Notwithstanding the provisions of § 81.7(c), an insured shall be permitted for a period of 90 days after the effective date of any applicable rate reduction to cancel an existing crime insurance policy and receive a pro rata refund of unearned premium if at the time of cancellation he applies for new coverage under the program.

(b) In the event of any cancellation to obtain new coverage at lower rates as provided by paragraph (a) of this section, the amount of the commission payable to the insured's agent or broker, if any, upon the concellation and contemporaneous writing of new coverage shall be determined by the length of time that has elapsed since the original policy was written. If the cancellation occurs and the new policy is written less than 1 year after the original policy was written, the agent or broker responsible for the writing of the new policy shall be entitled to the commission rate applicable to new policies. If the cancellation and rewriting occurs more than 1 year after the date of the original policy, then the agent or broker, if any, who procures the new policy shall be entitled to the commission rate applicable to renewals.

[37 FR 15298, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 81.8 Inquiries and complaints.

(a) Inquiries or complaints about the Federal crime insurance program should initially be directed to the property owner's agent or broker, or to the servicing company designated for the area in which the premises are located.

(b) Inquiries or complaints with respect to which satisfactory information or action cannot be obtained through local sources, and general or legal inquiries pertaining to the nature of the program, may be addressed to the Federal Insurance Administrator, Federal Emergency Management Agency, 1725 I Street, NW, Washington, DC 20472.

§ 81.9 Penalties for false statements.

All information provided by an applicant or a claimant on any form approved by the insurer, including representations as to the date on which such form is signed, shall be deemed material to the issuance of the policy applied for and to the disposition of claims submitted thereunder. Any false statement, misrepresentation, or concealment in the execution or submission of such forms, or in any writing or document knowingly submitted by the applicant or claimant in connection therewith, may result in his prosecution by the United States for fraud under 18 U.S.C. 1001, subject to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both.

§ 81.10 Nondiscrimination.

The Federal Crime Insurance Program and all policies issued or serviced thereunder are subject to applicable Federal regulations and requirements issued from time to time pursuant thereto. No persons shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program on the grounds of race, color, sex, marital status, age or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this subchapter should be referred to the Administrator.

[45 FR 41951, June 23, 1980]

PART 82—PROTECTIVE DEVICE REQUIREMENTS

Subpart A—General

Sec.
82.1 Definitions.
82.2 Purpose of protective device requirements.
82.3 Classification of properties.
82.4 Inspection of residential premises following losses.
82.5 Inspection of commercial premises.

Subpart B—Residential Properties

82.21 Minimum standards for residences and apartments.

Subpart C—Nonresidential Properties

82.31 Minimum standards for industrial and commercial properties.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

SOURCE: 36 FR 24772, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 82.1 Definitions.

As used in this subchapter, the term—

(a) "Baffle" means a piece of metal that covers the opening between a door and its frame at the area of penetration of the bolt or latch to deter the insertion of tools and prevent the exertion of pressure against the bolt or latch;

(b) "Central station, supervised service alarm system" means a silent alarm system that is constantly in operation, which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises, at a private sentry or guard headquarters that is attended and monitored 24 hours a day, that dispatches guards to the protected premises immediately upon the activation of the alarm, that periodically checks the operation and effectiveness of the system, and that notifies law enforcement authorities as soon as the breach of the premises is confirmed;

(c) "Dead bolt" means a locking device using a fixed bolt that, when in locked position, cannot be retracted by a door knob or handle or other normal door opening device or by the application of force against the penetrating end of the bolt;

(d) "Dead latch" means a locking device, usually spring-operated, that incorporates a feature to render the latch rigid in its locked position and incapable of release by prying or by the turning of an outside door knob or handle or similar door opening device;

(e) "Dead lock" means a locking device incorporating a lock that cannot be pushed or retracted into a door or window by the use of tools inserted between the frame of the door or window and the door or window itself. Except as otherwise indicated, a dead lock may be equipped with a dead bolt or a dead latch;

(f) "Double cylinder dead bolt lock" means a deadbolt lock that can be released from its locked position only by a key, whether on the inside or the outside of the door;

(g) "Local alarm system" means an alarm system that signals loudly at the premises by means of one or more tamper-protected sounding devices upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises;

(h) "Silent alarm system" means an alarm system that signals at a location other than the location where it is installed upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises; and

(i) "Throw," when used in the context of a locking device, means the distance that its bolt or latch protrudes from the body of the device when the bolt or latch is in a locked position.

§ 82.2 Purpose of protective device requirements.

(a) Section 1231(b) of the Act (12 U.S.C. 1749bbb-10a(b)) provides that no Federal crime insurance shall be made available to a property which is deemed by the insurer to be uninsurable or to a property with respect to which reasonable protective measures to prevent loss, consistent with standards established by the insurer, have not been adopted.

(b) It is the intention of the insurer to require at the inception of the program only those protective devices generally in use or readily available for particular types and classes of properties at the present time. As the program progresses, however, the insurer proposes to amend these requirements from time to time to enforce a higher and more effective standard of protection against ordinary property crimes than now exists. Such revised requirements are not expected to be published more often than once a year and will be applicable only to crime insurance policies issued or renewed after their effective date.

(c) Protective device standards that impose less-stringent or optional alternate requirements upon applicants and insured, as well as clarifications of existing standards, may be published at any time and shall be applicable both to new policies and to renewals and, at the option of the insured, to crime insurance policies already in force.

§ 82.3 Classification of properties.

The protective devices required under this part fall into two broad categories, residential and commercial.

Requirements for residential properties are expected to remain relatively stable and are not likely to vary by classes. The protective devices required for commercial and industrial properties will vary greatly by the type of risk involved and will be changed periodically as experience and knowledge are gained under the program and from studies being undertaken by other public and private agencies.

§ 82.4 Inspection of residential premises following losses.

(a) Each residential applicant applying for Federal Crime Insurance shall be responsible for meeting the protective device requirements applicable to his premises. Any person who is doubtful as to whether the protective devices existing on his premises at the time of application meet such requirements should examine the descriptive materials and illustrations available from the servicing company and direct any specific questions to the servicing company.

(b) In addition insurance agents and brokers are expected to assist and advise prospective insureds concerning the protective device requirements for residential premises. However, no agent or broker shall be authorized to approve or disapprove on behalf of the insurer the adequacy of any required protective devices, and any representation to the contrary is false and shall be void.

(c) Upon receiving any notice of loss from an insured, the Administrator shall cause an inspection of the insured residential premises to be made in the course of the adjustment of the claim in order to determine whether the premises meets the protective device requirements of the program. If no inspection of the premises has previously been made and if the first such inspection reveals that the insured premises does not comply with the applicable protective device requirements, any first loss covered by the terms of the insurance policy, involving robbery or a burglary evidenced by visible marks of forcible entry, will be paid irrespective of any deficiencies in the insured's compliance with the protective device requirements. However, the insured will be given thirty days from the date on which he is notified in writing of any deficiencies to correct such deficiencies. During that thirty day period, robbery or burglary losses covered by the terms of the insurance policy will continue to be paid irrespective of any deficiencies in the insured's compliance with the protective device requirements. Losses occuring more than thirty days after the date on which the insured has been notified in writing of the results of the inspection will be paid only if it is determined that a loss, covered by the terms of the insurance policy, did not result in whole or in part from a protective device deficiency of which the insured was previously placed on written notice.

[43 FR 4009, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§ 82.5 Inspection of commercial premises.

(a) All premises for which an application for commercial crime insurance against burglary losses is submitted shall be inspected by the servicing company to determine whether the premises comply with the applicable protective device requirements.

(b) Coverage under a commercial crime insurance policy indemnifying against burglary losses shall not commence unless it is determined that the premises sought to be insured comply with all applicable protective device requirements. *Provided,* That all commercial premises whose exterior doors and accessible openings are found upon inspection to be protected by central station supervised service alarm systems or silent alarm systems (as those systems are defined in paragraphs (b) and (h) of § 82.1) shall not be required to comply with the provisions of paragraphs (c) and (e) of § 82.31 pertaining to the protection of those exterior doors and accessible openings by such devices as bars, grillwork, and other physical barriers. The benefit of this provision, therefore, applies also to commercial premises which, because of their particularly high risk inventories of merchandise, continue to be required by paragraph (f)(1) and (2) of § 82.31 to have exterior doors and accessible openings protected by specified types of alarm systems, namely, supervised service alarm systems for the highest risk inventories and silent alarm systems for less high risk inventories.

(c) All commercial premises with annual gross receipts under $300,000 whose exterior doors and accessible openings are found upon inspection to be protected by local alarm systems (as defined in paragraph (g) § 82.1) which are designed to signal loudly at the premises, shall not be required to comply with the provisions of paragraphs (c) and (e) of § 82.31 pertaining to the protection of those accessible openings by such devices as bars, grillwork, and other physical barriers. The benefit of this provision applies also to commercial premises whose high risk inventories are referred to in paragraphs (f) (1) and (2) of § 82.31 and such premises shall not be required to be protected by supervised service alarm systems and silent alarm systems if the premises is equipped with a local alarm system designed to signal loudly at the premises.

(d) If upon any renewal of any policy the insured's statement of annual gross receipts shows that the annual gross receipts total $300,000 or more the insured will be notified that his premises must be brought into complete compliance with all applicable protective device requirements no later than the expiration of that renewal term. Prior to the issuance of any subsequent renewal policy, the Administrator shall cause an inspection to be made, at a time agreed upon with the insured, and no such subsequent renewal policy shall be issued unless the insured is found to be in compliance.

(e) The Administrator may in his discretion waive one or more protective device requirements with respect to any policy where he determines that compliance would be impractical and would impose a cost not reasonably commensurate with the protection derived. However, in the event of any loss contributed to in whole or in part by any such waiver, the Administrator may withdraw such waiver upon mailing to the insured thirty days written notice of withdrawal. Any loss occurring after thirty days from the day of the mailing of said notice shall not be paid unless the insured's premises shall be in compliance with the previously waived protective device requirement at the time of such loss. The Administrator may also in his discretion determine that the frequency and/or severity of occurrences of loss experienced under any policy issued under the provisions of paragraphs (b) and (c) of this section, requires that as a condition of renewal of such policy, the premises insured thereunder be protected by one or more of the protective devices described in paragraphs (a), (b), (c), (d), (e), and (f)(1), (f)(2), and (f)(3) of § 82.31.

(f) If, during the course of adjusting a claim submitted by an insured, an adjuster or other investigator discovers a protective device deficiency, not previously discovered and noted by an investigator, with respect to a device, described in any of paragraphs (a), (b), (c), (d), (e), and (f) of § 82.31, which the insured was required to have installed as a condition of eligibility for insurance coverage, the deficiency shall be made known to the insured who will be given thirty days after his receipt of such written notice within which to remedy the deficiency. During that thirty-day period, burglary losses covered by the terms of the policy will be paid irrespective of the deficiency. Burglary losses occurring more than thirty days after the date on which an insured is notified of the deficiency will be paid only if it is determined that the deficiency was corrected prior to the loss. However, no loss shall be payable at any time if caused in whole or in part by a protective device deficiency with respect to any device which the insured was required to have installed as a condition of eligibility, and which device was found to be present at the time of a previous investigation, if the deficiency resulted from the inoperability, alteration, removal or disconnection of said required protective device by or with the knowledge of the insured, subsequent to the previous inspection of the premises.

(g) An insured who has knowledge of an inoperability or other malfunction of a protective device which the insured was required to have installed as a condition of eligibility for insurance coverage shall immediately notify the Administrator of such deficiency in writing, or by use of the servicing company's toll-free telephone number 800-638-8780. If the insured complies with such emergency protective measures as the Administrator may specify following reciept of such notice, and if the deficiency is corrected within the time specified by the Administrator, no loss of coverage will result during the period of inoperability or malfunction.

(h) If an insured cancels a commercial policy because of a move to a new premises and applies for insurance at the new premises, there shall be a mandatory inspection to determine compliance with protective device requirements at the new location. However, protective device requirements shall not be applicable to the new premises until 30 days after the insured's receipt of written notice of either compliance or of a deficiency, thus giving the insured time in which to remedy the deficiency. Burglary losses occurring more than 30 days after the date on which the insured received notice of a deficiency will be paid only if it is determined that the deficiency was corrected prior to the loss.

[43 FR 4008, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Subpart B—Residential Properties

§ 82.21 Minimum standards for residences and apartments.

In order to be eligible for Federal crime insurance, residential premises shall meet the following minimum standards:

(a) Each exterior doorway or doorway leading to garage areas, public hallways, terraces, balconies, or other areas affording easy access to the insured premises, shall be protected by a door which, if not a sliding door, shall be equipped with a dead lock using either an interlocking vertical bolt and striker, or a minimum ½-inch throw dead bolt, or a minimum ½-inch throw self-locking dead latch.

(b) All sliding doors, first floor and basement windows, and windows opening onto stairways, fire escapes, porches, terraces, balconies, or other areas affording easy access to the premises, shall be equipped with a locking device of any kind.

Subpart C—Nonresidential Properties

§ 82.31 Minimum standards for industrial and commercial properties.

In order to be eligible for Federal crime insurance, a nonresidential premises shall meet the following minimum standards:

(a) Except for doorways that are completely protected during nonbusiness hours by heavy duty overhead doors or metal security screens or the equivalent, each exterior door shall be equipped with either a heavy-duty dead lock (utilizing either interlocking vertical bolts and striker or else a 1-inch dead bolt that extends at least one-half inch into the frame of the door), or a heavy-duty padlock (with casehardened steel shackle and five-pin tumbler operation), or a comparable dead lock or padlock that provides equivalent protection. Where applicable fire and safety laws permit their use, double-cylinder locks are recommended.

(b) All exterior grate or grill-type doors, overhead doors, and security screens or grillwork (unless permanently installed) shall be equipped with locks that meet the requirements of paragraph (a) of this section.

(c) Except for doorways that are completely protected during nonbusiness hours by heavy-duty overhead doors or metal security screens or the equivalent, each exterior door shall be of heavy gauge metal, tempered glass, or solid wood core (not less than 1⅜ inches thick) construction, or else shall be covered with metal sheeting of at least 16 gauge (1⁄16-inch thick) or its equivalent, or with grillwork, to give like protection;

(d) Outside hinge pins shall be welded, flanged, or screw-secured, nonremovable pins unless the hinge is constructed so as to provide equivalent protection against the removal of the door to which it is attached when the door is in the closed position.

(e) Except where expressly prohibited by applicable laws pertaining to fire protection, accessible openings exceeding 96 square inches in area and 6 inches in the smallest dimension (other than storefront display windows), shall either meet the standards for exterior doors, or else shall be protected by inside or outside iron bars one-half inch in diameter, or by flat steel material, spaced not more than 5 inches apart and securely fastened, or by iron or steel grills of ⅛-inch material of 2-inch mesh, securely fastened, or by other heavy-duty material that provides equivalent protection. The requirements of this paragraph shall not apply to skylights protected by alarm systems. For the purposes of this paragraph, an "accessible opening" is an opening such as a window, transom, skylight, or vent, regardless of whether it is made to be opened, which exceeds 96 square inches in area and 6 inches in the smallest dimension, any part of which is—

(1) 18 feet or less above either the ground or the roof of an adjoining building, or

(2) 14 feet or less from directly or diagonally opposite windows, fire escapes, or roofs, or

(3) 3 feet or less from openings, fire escapes, etc., in or projecting from the same wall or an adjacent wall leading to other premises.

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b) and (d) of this section, be protected by the type of alarm system indicated. If the system specified in (f)(1) of this section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(2) of this section shall be permitted.

(1) Central station and supervised service, alarm systems shall be required for the following:

(i) Jewelry—manufacturing, wholesale, retail and storage.

(ii) Guns and ammunition—wholesale and retail.

(iii) Wholesale liquor including beer and wine.

(iv) Wholesale tobacco.

(v) Wholesale drug.

(vi) Furs—manufacturing, wholesale, retail and storage.

(vii) Precious metal—manufacturing, wholesale, retail and storage.

(2) Silent alarm system shall be required for the following:

(i) Retail liquor store.

(ii) Pawn shop.

(iii) Electronic Equipment—Wholesale and retail.

(iv) Clothing (new) for persons over the age of twelve—wholesale and retail.

(v) Coin and stamp shop.

(vi) Cameras—wholesale and retail.

(3) Local alarm systems shall be required for the following:

(i) Antique store.

(ii) Art Gallery.

(iii) Service Station.

(g) The protective device requirements set forth in this section shall not apply to premises which are insured only under Option 2 against the peril of robbery only, as provided in paragraph (c) of § 83.25 of this chapter.

[36 FR 24772, Dec. 22, 1971, as amended at 37 FR 15298, July 29, 1972; 38 FR 4508, Feb. 15, 1973; 39 FR 14949, Apr. 29, 1974. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980]

PART 83—COVERAGES, RATES, AND PRESCRIBED POLICY FORMS

Subpart A—Residential Crime Insurance Coverage

Sec.

83.1 Description of residential coverage.
83.2 Limits of residential coverage.
83.3 Amount of residential policy deductible.
83.4 Residential crime insurance rates.
83.5 Required residential policy form.

Subpart B—Commercial Crime Insurance Coverage

83.21 Description of commercial coverage.
83.22 Limits of commercial coverage.
83.23 Amount of commercial policy deductible.
83.24 Classification of commercial risks.
83.25 Commercial crime insurance rates.
83.25a Application and date of commencement of coverage.
83.26 Required commercial policy form.

Authority: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12

U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963), unless otherwise noted.

Source: 36 FR 24774, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Residential Crime Insurance Coverage

§ 83.1 Description of residential coverage.

(a) The purpose of this § 83.1 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in § 83.5.

(b) The initial policy issued by the insurer for residential properties shall be known as the residential crime insurance policy. Subject to its terms, the policy reimburses an insured for loss from burglary and larceny incident thereto, robbery (including observed theft), or attempt thereat, of personal property from the premises or in the presence of an insured, and for damage to the premises caused by any such attempt. It also covers damage to the interior of the part of the building occupied by the named insured's household at the described premises, and to the insured property both therein and away from the premises, caused by vandalism or malicious mischief: *Provided*, That with respect to damage to the building an insured is the owner thereof or is liable for such damage. The policy is subject to the exclusions set forth therein.

(c) The residential crime insurance policy shall be written only for an individual or for a single family or household with respect to a one to four family house or separate living quarters in an apartment building or dormitory. Premises in hotels (other than residence hotels where normal occupancy exceeds 6 months in duration) and premises within residential properties used in whole or in part for business purposes are not eligible for coverage under the residential policy.

[36 FR 24774, Dec. 22, 1971, as amended at 37 FR 15298, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 83.2 Limits of residential coverage.

The residential crime insurance policy may be written in amounts not less than $1,000 and not in excess of $10,000 for each insurable premise. Any amount of insurance, or fraction thereof, above a specified limit shall be charged the applicable rate for the next higher limit of coverage. Specified limits of coverage are set forth in § 83.4.

[37 FR 15298, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 83.3 Amount of residential policy deductible.

The residential crime insurance policy shall be subject to a deductible in the amount of $50 for each loss occurrence, or 5 percent of the gross amount of the loss, whichever is greater. The face amount of coverage specified in the policy is not reduced by the application of this deductible. Thus, if an insured having a $5,000 policy incurs a $5,000 covered loss, he would receive $4,750. If the loss were $6,000, he would receive the full $5,000.

[39 FR 2361, Jan. 21, 1974. Redesignated at 44 FR 31177, May 31, 1979]

§ 83.4 Residential crime insurance rates.

The premium rates for the residential crime insurance policy vary according to the territory in which the insured premises are located, as set forth in Part 84 of this chapter. Annual premiums for policy limits of $1,000, $3,000, $5,000, $7,000, and $10,000 in each of these territorial classifications shall be as follows: (a) Territory 01 (low risk)—$20, $30, $40, $50, and $60; (b) Territory 02 (average risk)—$30, $40, $50, $60, and $70; and (c) Territory 03 (high risk)—$40, $50, $60, $70, and $80.

[37 FR 15298, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979]

§ 83.5 Required residential policy form.

The following shall constitute the policy form for the residential crime insurance policy and no other policy form shall be used. Coverage will commence at 12:00 noon following the date of a U.S. Post Office affixed postmark or proof of Certified or Registered mailing. In the absence of such postmark or other proof sufficient to substantiate the date of mailing, coverage will be effective at 12:00 noon following receipt by the servicing company, unless a later date is specified in the application.

(a) Owner's or tenant's Residential Crime Insurance Policy form:

FEDERAL INSURANCE ADMINISTRATION

RESIDENTIAL CRIME INSURANCE POLICY

The Federal Insurance Administrator, herein called the Insurer, agrees with the insured, named in the Application made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Application, and subject to (1) the provisions of title VI of Public Law 91-609 (12 U.S.C. 1749bbb-10a, et seq.) and Subchapter B, Chapter I, Title 44 of the Code of Federal Regulations (44 CFR 80-84), and (2) the limits of liability, exclusions, conditions, deductibles, and other terms of this Policy with respect to the following criminal acts:

Insuring Agreements

I. *Loss by burglary and larceny or robbery, including observed theft.* (a) To pay for loss by burglary and larceny incident thereto, or robbery, including observed theft, of all personal property from the premises or in the presence of an insured.

II. *Damage.* To pay for damage to the premises and to the insured property by burglary and larceny incident thereto, or robbery, including observed theft, or attempt threat, and for damage to the interior of that portion of any building occupied by the named insured's household at the premises and to the insured property therein or away from the premises by vandalism or malicious mischief: *Provided,* That with respect to damage to the building an insured is the owner thereof or is liable for such damage.

With respect to loss occurring at any part of the premises not occupied exclusively by the named insured's household, this insuring agreement applies only to property owned or used by an insured.

III. *Application of insurance while the premises are rented to another.* Such insurance as is afforded for loss at or damage to the premises applies while the premises are rented by an insured owner or tenant to another for use as a private residence only, subject to the following provisions:

1. The insurance applies only with respect to property owned by an insured.

2. The insurance does not apply (a) to money, securities, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, and articles of gold or platinum, furs, fine arts, antiques, coin or stamp collections, or (b) to loss caused by a tenant of such premises or any of his employees or members of his household.

IV. *Application of insurance while the premises are occupied by three or more persons not related to the named insured.* Such insurance as is afforded for loss at or damage to the premises applies while the premises are occupied by three or more persons not related to the named insured owner or tenant, subject to the following provisions:

1. The insurance applies only with respect to property owned by the named insured.

2. The insurance does not apply (a) to money, securities; gems, precious and semiprecious stones, gold or platinum (other than jewelry); antiques, coin or stamp collections; or (b) to loss caused by a tenant of such premises or any of his employees or members of his household.

3. Under this insuring agreement, the actual cash value of any one article of jewelry (including watches) shall be deemed not to exceed $50.

V. *Removal to other premises.* If the named insured moves to other premises which he intends to occupy permanently as his private residence, such insurance as it afforded for loss at or damage to the premises designated in the Application applies subject to the following provisions:

1. During the moving, for a period not to exceed thirty (30) days, the insurance applies at the premises and at the other premises and to the insured property while in transit.

2. Upon completion of the moving the insurance applies at the other premises and no longer applies at the original premises: *Provided,* That all coverage under this policy shall cease at the end of the thirty (30) day period, and the policy shall be deemed canceled by the Insurer as of such date.

VI. *Policy period, territory.* This Policy applies only to loss which occurs during the Policy period within a State, as defined in 12 U.S.C. 1749bbb-2 and set forth in 44 CFR 55.1.

EXCLUSIONS

This Policy does not apply:

(a) to loss committed by an insured;

(b) to loss of (1) any aircraft, motor vehicle (other than motorized equipment designed for service purposes and not licensed for highway use), trailer, boat or the equipment thereof, (2) articles carried or held as samples or for sale or for delivery after sale, or (3) animals, fish or birds;

(c) to loss sustained by a person not related to an insured who pays board or rent to an insured;

(d) to loss of (1) property pertaining to a business of an insured;

(e) to loss if the premises are not protected in accordance with the regulations of the Federal Insurance Administration, as published at the time of the inception of the then current term of the Policy in Crime Insurance Program 44 CFR 80 et seq.

Conditions

1. *Definitions*—(a) *Named insured.* "Named insured" means the insured named in the Application. "Insured" means the named insured and any person while a permanent member of the named insured's household, other than (1) a residence employee or (2) a person not related to the named insured or his spouse and who pays board or rent to either.

(b) *Premises.* "Premises" means the premises designated in the Application, including grounds, garages, stables, and other outbuildings incidental thereto.

(c) *Burglary.* "Burglary" or "burglary and larceny incident thereto" means the felonious abstraction of insured property from within the premises by a person making felonious entry therein by actual force and violence, evidenced by visible marks upon, or physical damage to, the exterior of the premises at the place of such entry.

(d) *Robbery.* "Robbery" or "robbery, including observed theft," means the taking of insured property (1) by violence inflicted on an insured; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by an insured; or (4) from the person or direct care and custody of an insured who has been killed or rendered unconscious.

(e) *Money.* "Money" means currency, coins, bank notes, and bullion.

(f) *Securities.* "Securities" mean all negotiable and nonnegotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

(g) *Business.* "Business" includes trade, profession, or occupation.

(h) *Loss.* "Loss" includes damage.

(i) *Residence employee.* "Residence employee" means an employee of an insured whose duties are incidental to the ownership, maintenance, or use of the premises, including the maintenance or use of automobiles or teams, or who performs elsewhere duties of a similar nature not in connection with an insured's business.

2. *Interests covered.* The insurance does not apply to the interest in insured property of any person or organization, unless included in the named insured's proof of loss.

3. *Limits of liability; settlement options.* The Insurer shall not be liable on account of any loss unless the amount of such loss shall exceed the amount of the deductible described in the Application which is made a part of this Policy and the Insurer shall then be liable only for such excess over and above the deductible, subject to and within the limit of insurance covered by the Policy. The limit of the Insurer's liability for loss or damage in any one occurrence shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor the actual cash value thereof at the time of loss: Provided, however, that the limit of the Insurer's liability for loss of money is $100, and for loss of securities is $500, and for loss of jewelry, including without limitation, watches, necklaces, bracelets, rings, gems, precious and semi-precious stones, and articles of gold, silver or platinum, including flatware and hollowware, furs, fine arts, antiques, coin or stamp collections is, in the aggregate, $500.00 per occurrence.

If there is a loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

The applicable limit of insurance stated in the application is the total limit of the Insurer's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence.

All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

The Insurer may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the named insured or the owner thereof. Any property so paid for or replaced shall become the property of the Insurer. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Insurer, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

4. *Insured's duties when loss occurs.* Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through any of its authorized agents, and (b) file detailed proof of loss,

duly sworn to, with the Insurer through its authorized agents within sixty (60) days after the discovery of loss. Upon the Insurer's request, the insured and every claimant hereunder shall submit to examination by the Insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable actions immediately following the discovery of a loss to protect the premises from further loss.

5. *Other insurance.* If there is any other valid and collectible insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance; provided, that the insurance shall not apply: (a) To property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by an insured.

6. *No benefit to bailee.* The insurance afforded by this Policy shall not inure directly or indirectly to the benefit of any carrier or bailee.

7. *Appraisal.* If the named insured and the Insurer fail to agree as to the amount of loss each shall, on the written demand of either made within sixty (60) days after receipt of proof of loss by the Insurer, appoint a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place within thirty (30) days after the two appraisers are appointed. If the appraisers fail to agree, they shall jointly select a competent and disinterested third appraiser and submit the question to him within fifteen (15) days thereafter. The first two appraisers shall state separately the actual cash value at time of loss and the amount of the loss. Subsequent agreement in writing by any two of the three appraisers within thirty (30) days after the third appraiser was selected shall be considered by the Insurer in determining the amount of the loss but shall not be considered binding upon him and shall not be admissible as such in court. The named insured and the Insurer shall each pay its chosen appraiser and shall bear equally the expenses of the third appraiser and the other expenses of appraisal.

The Insurer shall not be held to have waived any of its rights such as, without limitation, the right to deny liability under the Policy by any act relating to appraisal.

8. *Action against insurer.* No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, nor until ninety (90) days after the required proofs of loss have been filed with the Insurer, nor at all unless commenced within 2 years from the date when the insured first has knowledge of the loss and within 1 year after the date upon which the claimant received written notice of disallowance or partial disallowance of the claim. Any such action shall be brought in a U.S. district court, as required by 12 U.S.C. 1749bbb-11.

9. *Subrogation.* In the event of any payment under this Policy, the Insurer shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

10. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, as approved by the Federal Insurance Administrator.

11. *Cancellation.* This Policy may be canceled by the named insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. The grounds for cancellation of coverage by the Insurer shall be limited to those set forth in Subchapter B, Parts 80 et seq., Chapter I, Title 44 of the Code of Federal Regulations. Except as otherwise provided by such regulations and by Insuring Agreement V(2), notice of cancellation by the Insurer shall be mailed to the named insured at the address shown in this Policy, stating when not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named insured or by the Insurer shall be equivalent to mailing.

In the event of cancellation, earned premium shall be computed in accordance with the customary short rate table and procedure, unless otherwise specifically provided in said regulations issued by the Insurer. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. *Assignment.* Assignment of interest under this Policy shall not bind the Insurer

until its consent is endorsed hereon; if, however, the named insured shall die, this Policy shall cover the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insured: *Provided*, That notice of cancellation addressed to the insured named in the Application and mailed to the address shown in this Policy shall be sufficient notice to effect cancellation of this Policy. If the legal representative of the named insured is not a person who was a permanent member of the named insured's household at the time of the death of the named insured, this Policy shall apply as it applied prior to such death but shall not apply to loss of property owned or used by such legal representative, a member of his household or a residence employee thereof, unless such loss occurs at a part of the premises occupied exclusively by said named insured's household.

13. *Declarations.* By signing the Application or by acceptance of this Policy the named insured certifies and agrees, under penalty of Federal law dealing with fraud and false representation (18 U.S.C. 1001), that the statements in the Application are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations, that he is aware of the applicability of the Regulations issued by the Insurer, and that this Policy and said regulations embody all agreements existing between himself and the Insurer or any of its agents relating to this insurance.

In witness whereof, the Federal Insurance Administration has accepted the declarations of the Insured set forth in the Application and has caused this Policy to be issued.

____________________________,

Federal Insurance Administrator.

(b) Such endorsements to the owner's or tenant's Residential Crime Insurance Policy forms as the insurer may approve

[36 FR 24774, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, 41952, June 23, 1980]

Subpart B—Commercial Crime Insurance Coverage

§ 83.21 Description of commercial coverage.

(a) The purpose of this § 83.21 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in § 83.26.

(b) The initial policy issued by the insurer for commercial properties shall be known as the commercial crime insurance policy. Subject to its terms, the policy reimburses an insured for loss from robbery inside the premises, robbery outside the premises (up to a limit of $5,000 unless an armed guard accompanies the insured's messenger), the wrongful taking of insured property by compelling an insured to admit a person into the premises, safe burglary and larceny incident thereto (up to a limit of $5,000 unless the insured property is in a Class E safe anchored to the floor), theft observed by the insured, theft from a night depository in a bank, burglary and larceny incident thereto, robbery of a watchman (not to exceed $50 for any one article of jewelry), and damage to the premises (of which the insured is owner or for which the insured is liable) as a result of any of the foregoing. The policy is subject to the exclusions set forth therein.

(c) The commercial crime insurance policy may be written for any industrial, commercial, nonprofit, or public property in accordance with the risk classifications set forth in § 83.24 and within the limits of coverage set forth in § 83.22, subject to the applicable requirements of this subchapter, such as the requirement for adequate protective devices set forth in Subpart C of Part 82 of this chapter.

(d) Certain portions of the materials contained in the sections that follow are based upon the Burglary Insurance Manual issued by the Insurance Services Office, 160 Water Street, New York, N.Y. 10038, and are being reproduced in these regulations and in the related commercial crime insurance manual with the permission of the copyright owner.

§ 83.22 Limits of commercial coverage.

The commercial crime insurance policy may be written in amounts not less than $1,000 and not in excess of $15,000 for each insured premises. The maximum limit of coverage may not be increased by insuring several departments of a single business or institution at one premises as separate premises. Each $1,000 of insurance, or fraction thereof, shall be charged the applicable rate for the full $1,000 of coverage.

§ 83.23 Amount of commercial policy deductible.

(a) The commercial crime insurance policy for industrial and commercial risks shall be subject to a deductible in the following amounts for each loss occurrence or 5 percent of the gross amount of the loss, whichever is greater, in accordance with the following categories of annual gross receipts (or operating budget if applicable):

Less than $100,000	$50
100,000 to 299,999	100
300,000 to 499,999	150
500,000 and above	200

The face amount of coverage specified in the policy is not reduced by the application of this deductible. Thus, if an insured having a $15,000 policy incurs a $15,000 covered loss, he would receive $14,250. If the loss were $16,000, he would receive the full $15,000.

(b) The commercial crime insurance policy for non-profit or public property risks shall be subject to a deductible in the amount of $50 for each loss occurrence or 5 percent of the amount of loss, whichever is greater.

[39 FR 2361, Jan. 21, 1974. Redesignated at 44 FR 31177, May 31, 1979]

§ 83.24 Classification of commercial risks.

(a) The governing factor in determining the risk classification applicable to a particular premises is the kind of business conducted by the insured at that location. If there is no specific kind of business applicable to the risk, then the kind of merchandise inventoried and held for sale governs. Such risks take the classification of the merchandise or inventory comprising the majority value of the contents. For example, a candy store carrying an incidental line of tobacco is still classified as a candy store.

(b) Individual concessionaires operating within a premises take the same classification as the business premises in which such concessionaires are located unless the concessionaire's classification is higher, in which case the concessionaire's classification shall be used.

(c) The following classifications shall be applicable to the commercial crime insurance policy:

Class		Statistical code
1	All risks not otherwise classified, including nonprofit and public properties	01
3	Amusement Enterprises (not otherwise classified)	02
2	Automobile Sales and Service	03
2	Billiard and Pool Parlors	04
2	Bowling Lanes or Centers	05
3	Cameras and Photographic Supplies	06
3	Clubs	07
3	Dance Halls and Pavilions	08
2	Drug Stores and Druggists' Sundries	09
3	Dry Cleaners	10
2	Electrical Appliances—Sales and Service	11
3	Furriers	12
2	Garages	13
3	Gasoline Service Stations	14
2	Golf and Other Sports Professionals	15
2	Grocery Stores and Delicatessens	16
3	Gun and Ammunition Shops	17
3	Jewelry Stores	18
3	Laundries	19
3	Liquor Stores	20
2	Meat and Poultry Dealers; Butcher Stores	21
2	Men's and Students' Clothing, 14 years and over	2
3	Pawnbrokers	23
2	Radio and Television—Sales and Service	24
2	Restaurants	25
3	Small loan and Finance Companies	26
3	Taverns	27
3	Theaters	28
2	Tobacco Dealers	29
2	Women's and Junior Teens' Clothing, 14 years and over	30

(d) Warehouses and or other storage areas shall take the classification of the merchandise or inventory comprising the majority value of the contents.

[36 FR 24774, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, as amended at 45 FR 41952, June 23, 1980]

§ 83.25 Commercial crime insurance rates.

(a) Premium rates for commercial crime insurance policies for risks having annual gross receipts of less than $2,000,000 shall be determined by reference to the rate charts contained in paragraph (f) of this section. The annual gross receipts shall be those contained in the insured's most recently filed Federal income tax return for the most recent taxable year. If the applicant is a non-profit or public entity whose gross receipts constitute less than its operating budget, its operating budget shall be used in lieu of gross receipts to determine the appropriate premium.

(b) Option 1. An applicant may apply for insurance coverage under all of the Insuring Agreements, I, II, III, IV, V, VI, and VII of the Commercial Crime Insurance Policy. Agreements I and II deal with Robbery and Observed Theft inside and outside the premises, Agreements III and IV deal with Safe burglary and Theft from a Night Depository, Agreement V deals with Burglary and Robbery of a Watchman and Agreement VI deals with Damage. Agreement VII limits coverage to losses occurring within the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions and the trust territory of the Pacific Islands. This package provides a uniform limit of coverage for all Agreements and is referred to as Option 1.

(c) Option 2. An applicant may apply for insurance coverage under only Insuring Agreements I, II, VI and VII of the Commercial Policy dealing with Robbery and Observed Theft inside and outside the premises and Damage resulting from losses under Insuring Agreements I and II only. Such coverage shall be referred to as Option 2.

(d) Option 3. An applicant may apply for insurance coverage under only Insuring Agreements III, IV, V, VI and VII of the Commercial Policy dealing with Safe Burglary, Theft from Night Depository, and Burglary or Robbery of a Watchman, and Damage resulting from losses under Insuring Agreements III and V only. Such coverage shall be referred to as Option 3.

(e) Option 4. An applicant may apply for varying limits of insurance coverage under both Option 2 and Option 3 but only in the same policy. Both Options 2 and 3 must be applied for at the same time. If one of these options has already been selected the other option may be added upon a renewal or upon rewriting the original policy to add the new option.

(f) The following rate tables may be used to determine rates for commercial risks having annual gross receipts of less than $2 million annually.

240

SCHEDULE 1.—COMMERCIAL CRIME INSURANCE RATES

Annual premium for—Terr. 1—Class 1	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
	1,000			$2,000			$3,000			$4,000		
Gross receipts:												
Less than $25,000	$70	$42	$35	$133	$80	$67	$189	$133	$95	$238	$143	$119
$25,000 to $49,999	70	42	35	133	80	67	189	113	95	238	143	119
$50,000 to $99,999	70	42	35	133	80	67	189	113	95	238	143	119
$100,000 to $299,999	105	63	53	200	120	100	284	170	142	357	214	179
$300,000 to $499,999	140	84	70	266	160	133	378	227	189	476	286	238
$500,000 to $999,999	175	105	88	333	200	167	473	284	237	595	357	298
$1,000,000 to $1,499,999	280	168	140	532	319	266	756	454	378	952	571	476
$1,500,000 to $1,999,999	315	189	158	599	359	300	851	511	426	1,071	643	536
	$5,000			$6,000			$7,000			$8,000		
Less than $25,000	$280	$168	$140	$315	$189	$158	$343	$206	$172	$364	$218	$182
$25,000 to $49,999	280	168	140	315	189	158	343	206	172	364	218	182
$50,000 to $99,999	280	168	140	315	189	158	343	206	172	364	218	182
$100,000 to $299,999	420	252	210	473	284	237	515	309	258	546	328	273
$300,000 to $499,999	560	336	280	630	378	315	686	412	343	728	437	364
$500,000 to $999,999	700	420	350	788	473	394	858	515	429	910	546	455
$1,000,000 to $1,499,999	1,120	672	560	1,260	756	630	1,372	823	686	1,456	874	728
$1,500,000 to $1,999,999	1,260	756	630	1,418	851	709	1,544	926	772	1,638	983	819
	$9,000			$10,000			$11,000			$12,000		
Less than $25,000	$378	$227	$189	$385	$231	$193	$389	$233	$195	$392	$235	$196
$25,000 to $49,999	378	227	189	385	231	193	389	233	195	392	235	196
$50,000 to $99,999	378	227	189	385	231	193	389	233	195	392	235	196
$100,000 to $299,999	567	340	289	578	347	289	583	350	292	588	353	294
$300,000 to $499,999	756	454	378	770	462	385	777	466	389	784	470	392
$500,000 to $999,999	945	567	473	963	578	482	971	583	486	980	588	490
$1,000,000 to $1,499,999	1,512	907	756	1,540	924	770	1,554	932	777	1,568	941	784
$1,500,000 to $1,999,999	1,701	1,021	851	1,733	1,040	867	1,748	1,049	874	1,764	1,058	882
	$13,000			$14,000			$15,000					
Less than $25,000	$396	$238	$198	$399	$239	$200	$403	$242	$202			

$25,000 to $49,999	396	238	198	399	239	200	403	242	202
$50,000 to $99,999	396	238	198	399	239	200	403	242	202
$100,000 to $299,999	594	356	297	599	359	300	604	362	302
$300,000 to $499,999	792	475	396	798	479	399	805	483	403
$500,000 to $999,999	989	593	495	998	599	499	1,006	604	503
$1,000,000 to $1,499,999	1,582	949	791	1,596	958	798	1,610	966	805
$1,500,000 to $1,999,999	1,780	1,068	890	1,796	1,078	898	1,811	1,087	906

Option (1)—Burglary and robbery coverage in uniform amount.
Option (2)—Robbery only coverage.
Option (3)—Burglary only coverage.
The rate for Option (4) consists of the sum of the rates for the selected amounts of coverage under Options (2) and (3).

SCHEDULE 2.—COMMERICAL CRIME INSURANCE RATES

Annual premium for—Terr. 1—Class 2 and Terr. 2—Class 1	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
	$1,000			$2,000			$3,000			$4,000		
Gross receipts:												
Less than $25,000	$80	$48	$40	$152	$91	$76	$216	$130	$108	$272	$163	$136
$25,000 to $49,999	80	48	40	152	91	76	216	130	108	272	163	136
$50,000 to $99,999	80	48	40	152	91	76	216	130	108	272	163	136
$100,000 to $299,999	120	72	60	282	137	114	324	194	162	408	245	204
$300,000 to $499,999	160	96	80	304	182	152	432	259	216	544	326	272
$500,000 to $999,999	200	120	100	380	228	190	540	324	270	680	408	340
$1,000,000 to $1,499,999	320	192	160	608	365	304	864	518	432	1,088	653	544
$1,500,000 to $1,999,999	360	216	180	684	410	342	972	583	486	1,224	734	612
	$5,000			$6,000			$7,000			$8,000		
Less than $25,000	$320	$192	$160	$360	$216	$180	$392	$235	$196	$416	$250	$208
$25,000 to $49,999	320	192	160	360	216	180	392	235	196	416	250	208
$50,000 to $99,999	320	192	160	360	216	180	392	235	196	416	250	208
$100,000 to $299,999	480	288	240	540	324	270	588	353	294	624	374	312
$300,000 to $499,999	640	384	320	720	432	360	784	470	392	832	499	416
$500,000 to $999,999	800	480	400	900	540	450	980	588	490	1,040	624	520
$1,000,000 to $1,499,999	1,280	768	640	1440	864	720	1,568	941	784	1,664	998	832
$1,500,000 to $1,999,999	1,440	864	720	1620	972	810	1,764	1,058	882	1,872	1,123	936

SCHEDULE 2.—COMMERICAL CRIME INSURANCE RATES—Continued

Annual premium for—Terr. 1—Class 2 and Terr. 2—Class 1	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
	$9,000			$10,000			$11,000			$12,000		
Less than $25,000	$432	$259	$216	$440	$264	$220	$444	$266	$222	$448	$269	$224
$25,000 to $49,999	432	259	216	440	264	220	444	266	222	448	269	224
$50,000 to $99,999	432	259	216	440	264	220	444	266	222	448	269	224
$100,000 to $299,999	648	389	324	660	396	330	666	400	333	672	403	336
$300,000 to $499,999	864	518	432	880	528	440	888	533	444	896	537	448
$500,000 to $999,999	1,080	648	540	1,100	660	550	1,110	666	555	1,120	672	560
$1,000,000 to $1,499,999	1,728	1,037	864	1,760	1,056	880	1,776	1,066	888	1,792	1,075	896
$1,500,000 to $1,999,999	1,944	1,166	972	1,980	1,188	990	1,998	1,199	999	2,016	1,210	1,008
	$13,000			$14,000			$15,000					
Less than $25,000	$452	$271	$226	$456	$274	$228	$460	$276	$230			
$25,000 to $49,999	452	271	226	456	274	228	460	276	230			
$50,000 to $99,999	452	271	226	456	274	228	460	276	230			
$100,000 to $299,999	678	407	339	684	410	342	690	414	345			
$300,000 to $499,999	904	542	452	912	547	456	920	552	460			
$500,000 to $999,999	1,130	678	565	1,140	684	570	1,150	690	575			
$1,000,000 to $1,499,999	1,808	1,085	904	1,824	1,094	912	1,840	1,104	920			
$1,500,000 to $1,999,999	2,034	1,220	1,017	2,052	1,231	1,026	2,070	1,242	1,035			

Option (1)—Burglary and robbery coverage in uniform amount.
Option (2)—Robbery only coverage.
Option (3)—Burglary only coverage.
The rate for Option (4) consists of the sum of the rates for the selected amounts of coverage under Options (2) and (3).

SCHEDULE 3.—COMMERCIAL CRIME INSURANCE RATES

Annual premium for—Terr. 1—Class 3 and Terr. 2—Class 2, and Terr. 3—Class 1	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
	$1,000			$2,000			$3,000			$4,000		
Gross receipts:												
Less than $25,000	$100	$60	$50	$190	$114	$95	$270	$162	$135	$340	$204	$170
$25,000 to $49,999	100	60	50	190	114	95	270	162	135	340	204	170
$50,000 to $99,999	100	60	50	190	114	95	270	162	135	340	204	170

$100,000 to $299,999	150	90	75	285	171	143	405	243	203	510	306	255
$300,000 to $499,999	200	120	100	380	228	190	540	324	270	680	408	340
$500,000 to $999,999	250	150	125	475	285	238	675	405	338	850	510	425
$1,000,000 to $1,499,999	400	240	200	760	456	380	1,080	648	540	,1,360	816	680
$1,500,000 to $1,999,999	450	270	225	855	513	428	1,215	729	608	1,530	918	765
	$5,000			$6,000			$7,000			$8,000		
Less than $25,000	$400	$240	$200	$450	$270	$225	$490	$294	$245	$520	$312	$260
$25,000 to $49,999	400	240	200	450	270	225	490	294	245	520	312	260
$50,000 to $99,999	400	240	200	450	270	225	490	294	245	520	312	260
$100,000 to $299,999	600	360	300	675	405	338	735	441	368	780	468	390
$300,000 to $499,999	800	480	400	900	540	450	980	588	490	1,040	624	520
$500,000 to $999,999	1,000	600	500	1,125	675	563	1,225	735	613	1,300	780	650
$1,000,000 to $1,499,999	1,600	960	800	1,800	1,080	900	1,960	1,176	980	2,080	1,248	1,040
$1,500,000 to $1,999,999	1,800	1,080	900	2,025	1,215	1,013	2,205	1,323	1,103	2,340	1,404	1,170
	$9,000			$10,000			$11,000			$12,000		
Less than $25,000	$540	$324	$270	$550	$330	$275	$555	$333	$278	$560	$336	$280
$25,000 to $49,999	540	324	270	550	330	275	555	333	278	560	336	280
$50,000 to $99,999	540	324	270	550	330	275	555	333	278	560	336	280
$100,000 to $299,999	810	486	405	825	495	413	833	500	417	840	504	420
$300,000 to $499,999	1,080	648	540	1,100	660	550	1,110	666	555	1,120	672	560
$500,000 to $999,999	1,350	810	675	1,375	825	688	1,388	833	694	1,400	840	700
$1,000,000 to $1,499,999	2,160	1,296	1,080	2,200	1,320	1,100	2,220	1,332	1,110	2,240	1,344	1,120
$1,500,000 to $1,999,999	2,430	1,458	1,215	2,475	1,485	1,238	2,498	1,499	1,249	2,520	1,512	1,260
	$13,000			$14,000			$15,000					
Less than $25,000	$565	$339	$283	$570	$342	$285	$575	$345	$288			
$25,000 to $49,999	565	339	283	570	342	285	575	345	288			
$50,000 to $99,999	565	339	283	570	342	285	575	345	288			
$100,000 to $299,999	848	509	424	855	513	428	863	518	432			
$300,000 to $499,999	1,130	678	565	1,140	684	570	1,150	690	575			
$500,000 to $999,999	1,413	848	707	1,425	855	713	1,438	863	719			
$1,000,000 to $1,499,999	2,260	1,356	1,130	2,280	1,368	1,140	2,300	1,380	1,150			
$1,500,000 to $1,999,999	2,543	1,526	1,272	2,565	1,539	1,283	2,588	1,553	1,294			

Option (1)—Burglary and robbery coverage in uniform amount.
Option (2)—Robbery only coverage.
Option (3)—Burglary only coverage.
The rate for Option (4) consists of the sum of the rates for the selected amounts of coverage under Options (2) and (3).

SCHEDULE 4.—COMMERCIAL CRIME INSURANCE RATES

Annual premium for—Terr. 2—Class 3 and Terr. 3—Class 2.	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
	$1,000			$2,000			$3,000			$4,000		
Gross receipts:												
Less than $25,000	$120	$72	$60	$228	$137	$114	$324	$194	$162	$408	$245	$204
$25,000 to $49,999	120	72	60	228	137	114	324	194	162	408	245	204
$50,000 to $99,999	120	72	60	228	137	114	324	194	162	408	245	204
$100,000 to $299,999	180	108	90	342	205	171	486	292	243	612	367	306
$300,000 to $499,999	240	144	120	456	274	228	648	389	324	816	490	408
$500,000 to $999,999	300	180	150	570	342	285	810	486	405	1,020	612	510
$1,000,000 to $1,499,999	480	288	240	912	547	456	1,296	778	648	1,632	979	816
$1,500,000 to $1,999,999	540	324	270	1,026	616	513	1,458	875	729	1,836	1,102	918
	$5,000			$6,000			$7,000			$8,000		
Less than $25,000	$480	$288	$240	$540	$324	$270	$588	$353	$294	$624	$374	$312
$25,000 to $49,999	480	288	240	540	324	270	588	353	294	624	374	312
$50,000 to $99,999	480	288	240	540	324	270	588	353	294	624	374	312
$100,000 to $299,999	720	432	360	810	486	405	882	529	441	936	562	468
$300,000 to $499,999	960	576	480	1,080	648	540	1,176	706	588	1,248	749	624
$500,000 to $999,999	1,200	720	600	1,350	810	675	1,470	882	735	1,560	936	780
$1,000,000 to $1,499,999	1,920	1,152	960	2,160	1,296	1,080	2,352	1,411	1,176	2,496	1,498	1,248
$1,500,000 to $1,999,999	2,160	1,296	1,080	2,430	1,458	1,215	2,646	1,588	1,323	2,808	1,685	1,404
	$9,000			$10,000			$11,000			$12,000		
Less than $25,000	$648	$389	$324	$660	$396	$330	$666	$400	$333	$672	$403	$336
$25,000 to $49,999	648	389	324	660	396	330	666	400	333	672	403	336
$50,000 to $99,999	648	389	324	660	396	330	666	400	333	672	403	336
$100,000 to $299,999	972	583	486	990	594	495	999	599	500	1,008	605	504
$300,000 to $499,999	1,296	778	648	1,320	792	660	1,332	799	666	1,344	806	672
$500,000 to $999,999	1,620	972	810	1,650	990	825	1,665	999	833	1,680	1,008	840
$1,000,000 to $1,499,999	2,592	1,555	1,296	2,640	1,584	1,320	2,664	1,598	1,332	2,688	1,613	1,344
$1,500,000 to $1,999,999	2,916	1,750	1,458	2,970	1,782	1,485	2,997	1,798	1,499	3,024	1,814	1,512
	$13,000			$14,000			$15,000					
Less than $25,000	$678	$407	$339	$684	$410	$342	$690	$414	$345			

$25,000 to $49,999	678	407	339	684	410	342	690	414	345
$50,000 to $99,999	678	407	339	684	410	342	690	414	345
$100,000 to $299,999	1,017	610	509	1,026	616	513	1,035	621	518
$300,000 to $499,999	1,356	814	678	1,368	821	684	1,380	828	690
$500,000 to $999,999	1,695	1,017	848	1,710	1,026	855	1,725	1,035	863
$1,000,000 to $1,499,999	2,712	1,627	1,356	2,736	1,642	1,368	2,760	1,656	1,380
$1,500,000 to $1,999,999	3,051	1,831	1,526	3,078	1,847	1,539	3,105	1,863	1,553

Option (1)—Burglary and robbery coverage in uniform amount.
Option (2)—Robbery only coverage.
Option (3)—Burglary only coverage.
The rate for Option (4) consists of the sum of the rates for the selected amounts of coverage under Options (2) and (3).

SCHEDULE 5.—COMMERCIAL CRIME INSURANCE RATES

Annual premium for—Terr. 3—Class 3	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
	$1,000			$2,000			$3,000			$4,000		
Gross receipts:												
Less than $25,000	$130	$78	$65	$247	$148	$124	$351	$211	$176	$442	$265	$221
$25,000 to $49,999	130	78	65	247	148	124	351	211	176	442	265	221
$50,000 to $99,999	130	78	65	247	148	124	351	211	176	442	265	221
$100,000 to $299,999	195	117	98	371	223	186	527	316	264	663	398	332
$300,000 to $499,999	260	156	130	494	296	247	702	421	351	884	530	442
$500,000 to $999,999	325	195	163	618	371	309	878	527	439	1,105	663	553
$1,000,000 to $1,499,999	520	312	260	988	593	494	1,404	842	702	1,768	1,061	884
$1,500,000 to $1,999,999	585	351	293	1,112	667	556	1,580	948	790	1,989	1,193	995
	$5,000			$6,000			$7,000			$8,000		
Less than $25,000	$520	$312	$260	$585	$351	$293	$637	$382	$319	$676	$406	$338
$25,000 to $49,999	520	312	260	585	351	293	637	382	319	676	406	338
$50,000 to $99,999	520	312	260	585	351	293	637	382	319	676	406	338
$100,000 to $299,999	780	468	390	878	527	439	956	574	478	1,014	608	507
$300,000 to $499,999	1,040	624	520	1,170	702	585	1,274	764	637	1,352	811	676
$500,000 to $999,999	1,300	780	650	1,463	878	732	1,593	956	797	1,690	1,014	845
$1,000,000 to $1,499,999	2080	1248	1,040	2,340	1,404	1,170	2,548	1,529	1,274	2,704	1,622	1,352
$1,500,000 to $1,999,999	2340	1404	1170	2633	1580	1317	2867	1720	1434	3042	1825	1521
	$9,000			$10,000			$11,000			$12,000		
Less than $25,000	$702	$421	$351	$715	$429	$358	$722	$433	$361	$728	$437	$364
$25,000 to $49,999	702	421	351	715	429	358	722	433	361	728	437	364

SCHEDULE 5.—COMMERCIAL CRIME INSURANCE RATES—Continued

Annual premium for—Terr. 3—Class 3	Amount of coverage											
	Options			Options			Options			Options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
$50,000 to $99,999	702	421	351	715	429	358	722	433	361	728	437	364
$100,000 to $299,999	1,053	632	527	1,073	644	537	1,082	649	541	1,092	655	546
$300,000 to $499,999	1,404	842	702	1,430	858	715	1,443	866	722	1,456	874	728
$500,000 to $999,999	1,755	1,053	878	1,788	1,073	894	1,804	1,082	902	1,820	1,092	910
$1,000,000 to $1,499,999	2,808	1,685	1,404	2,860	1,716	1,430	2,886	1,732	1,443	2,912	1,747	1,456
$1,500,000 to $1,999,999	3,159	1,895	1,580	3,218	1,931	1,609	3,247	1,948	1,624	3,276	1,966	1,638
	$13,000			$14,000			$15,000					
Less than $25,000	$735	$441	$368	$741	$445	$371	$748	$449	$374			
$25,000 to $49,999	735	441	368	741	445	371	748	449	374			
$50,000 to $99,999	735	441	368	741	445	371	748	449	374			
$100,000 to $299,999	1,102	661	551	1,112	667	556	1,121	673	561			
$300,000 to $499,999	1,469	881	735	1,482	889	741	1,495	897	748			
$500,000 to $999,999	1,836	1,102	918	1,853	1,112	927	1,869	1,121	935			
$1,000,000 to $1,499,999	2,938	1,763	1,469	2,964	1,778	1,482	2,990	1,794	1,495			
$1,500,000 to $1,999,999	3,305	1,983	1,653	3,335	2,001	1,668	3,364	2,018	1,682			

Option (1)—Burglary and robbery coverage in uniform amount.
Option (2)—Robbery only coverage.
Option (3)—Burglary only coverage.
The rate for Option (4) consists of the sum of the rates for the selected amounts of coverage under Options (2) and (3).

(g) The following procedure shall be used to determine the annual premium rates for commercial risks having annual gross receipts in excess of $2 million.

(1) For risks having annual gross receipts between $2 million and $4,999,999, the base rate for the first $1,000 of combined burglary and robbery (Option 1) coverage shall be 0.00008 of such annual gross receipts (or operating budget, if applicable) multiplied by 5.00.

(2) For risks having annual gross receipts of $5 million or more the base rate for the first $1,000 of combined burglary and robbery coverage shall be .0001 of such annual gross receipts (or operating budget, if applicable) multiplied by 5.00.

(3) Rates for higher limits of coverage shall be determined by applying to the premium base derived in accordance with paragraphs (g)(1) and (2) of this section the appropriate higher limits factor from the following table for the applicable amount of coverage.

Rate for applicable amount of coverage	Higher limits factor
$1,000	1.00
2,000	1.90
3,000	2.70
4,000	3.40
5,000	4.00
6,000	4.50
7,000	4.90
8,000	5.20
9,000	5.40
10,000	5.50
11,000	5.55
12,000	5.60
13,000	5.65
14,000	5.70
15,000	5.75

(4) The premium for combined coverage under Option 1 shall be 100 percent of the premium rate computed under paragraphs (g)(1), (2) and (3) of this section.

(5) The premium for coverage under Option 2 shall be 60 percent of the premium rate computed under paragraphs (g)(1), (2) and (3) of this section.

(6) The premium for coverage under Option 3 shall be 50 percent of the premium rate computed under paragraphs (g)(1), (2) and (3) of this section.

(7) The premium for combined coverage under Option 4 shall be the sum of the applicable premiums for the individual coverage under Option 2 and the coverage under Option 3, computed under paragraphs (g) (5) and (6) of this section.

(8) All premiums shall be rounded to the next higher dollar above $0.49 to obtain the chargeable annual policyholder premium. At or below $0.49 premiums shall be rounded down to the next lower dollar.

(Title XII of the Housing and Urban Development Act of 1969 (Pub. L. 90-488, 88 Stat. 476); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Delegation of Authority to Federal Insurance Administrator (44 FR 20963))

[45 FR 41952, June 23, 1980]

§ 83.25a Application and Date of Commencement of Coverage.

(a) Application for commercial Federal crime insurance shall be made only on forms approved by the Administrator. When a property is found by preinspection to comply with the applicable protective device requirements, coverage on property under a policy covering burglary losses will commence at 12:00 noon following the date of a U.S. Post Office affixed postmark, or proof of Certified or Registered mailing. In the absence of such postmark or other proof sufficient to substantiate the date of mailing, coverage will be effective at 12:00 noon following receipt by the servicing company, unless a later date is specified in the application.

(b) Coverage under a policy covering robbery only will commence as described in paragraph (a) of this section, except that protective device preinspection is not applicable. When both robbery and burglary coverages are applied for on an application, an advance request may be submitted with the application to issue a policy for Option 2 Robbery Only insurance coverage if the premises fails to meet the protective device requirements which must be complied with as a prerequisite to obtaining burglary coverage. In such an event the Option 2 policy covering only robbery losses will commence as described above.

(Title XII of the Housing and Urban Development Act of 1969 (Pub. L. 90-488, 88 Stat. 476); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Delegation of Authority to Federal Insurance Administrator (44 FR 20963))

[45 FR 41956, June 23, 1980]

§ 83.26 Required commercial policy form.

The following shall constitute the policy form for the commercial crime insurance policy, and no other policy form shall be used unless otherwise provided by this § 83.26.

(a) [Reserved]

(b) Commercial Crime Insurance Policy form:

FEDERAL INSURANCE ADMINISTRATION

COMMERCIAL CRIME INSURANCE POLICY

The Federal Insurance Administrator, herein called the Insurer, agrees with the insured, named in the Application made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Application, and subject to (1) the provisions of title VI of Public Law 91-609 and Subchapter B, Parts 80 et seq., Chapter I, Title 44 of the Code of Federal Regulations, and (2) the limits of insurance, exclusions, conditions, deductibles, and other terms of this Policy with respect to the following criminal acts:

Insuring Agreements

I. *Robbery, including observed theft, inside the premises.* To pay for loss by robbery or observed theft of money, securities, merchandise, furniture, fixtures, and equipment within the premises.

II. *Robbery, including observed theft, outside the premises.* To pay for loss by robbery or observed theft of money, securities, and merchandise, including the wallet or bag containing such property, while such property is being conveyed by a messenger outside the premises, but no payment shall be made for any loss in excess of $5,000 except when an armed guard accompanies the messenger.

III. *Safe burglary.* To pay for loss by safe burglary and larceny incident thereto of money, securities, and merchandise within the premises but no payment shall be made for any loss in excess of $5,000 except with respect to loss by safe burglary of a Class E safe securely anchored to the floor.

IV. *Theft from night depository.* To pay for loss by theft of money and securities within any night depository in a bank.

V. *Burglary; robbery of watchman.* To pay for loss by burglary and larceny incident thereto or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures, and equipment within the premises. Under this insuring agreement, the actual cash value of any one article of jewelry shall be deemed not to exceed $50.

VI. *Damage.* To pay for damage to the premises and to money, securities, merchandise, furniture, fixtures, and equipment within the premises, by robbery, burglary, safe burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises the insured is the owner thereof or is liable for such damage.

VII. *Policy period, territory.* This Policy applies only to loss which occurs during the Policy period within a State, as defined in 12 U.S.C. 1749bbb-2 and set forth in 44 CFR 55.1.

Exclusions

This Policy does not apply:

(a) To loss due to embezzlement or to any fraudulent, dishonest, or criminal act by any insured, a partner therein, or an officer, employee, director, trustee, or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others: *Provided,* That this exclusion does not apply to safe burglary or robbery or attempt thereat by other than an insurance or a partner therein:

(b) To loss due to war, whether or not declared, civil war, insurrection, rebellion, or revolution, or to any act or condition incident to any of the foregoing;

(c) To loss of manuscripts, records, or accounts;

(d) Under Insuring Agreements V and VI, to loss occurring during a fire in the premises;

(e) To loss due to nuclear reaction, nuclear radiation, or radioactive contamination, or to any act or condition incident to any of the foregoing;

(f) To any loss if the premises are not equipped with the protective devices required as a condition of eligibility for the purchase of this Policy by the regulations of the Federal Insurance Administration, as published at the time of the inception of the current term of the Policy in Subchapter B, Parts 80 et seq., Chapter I, Title 44, Code of Federal Regulations.

Conditions

1. *Definitions*—(a) *Money.* "Money" means currency, coins, bank notes, and bullion; and travelers checks, register checks, and money orders held for sale to the public.

(b) *Securities.* "Securities" means all negotiable and nonnegotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

(c) *Premises.* "Premises" means the interior of that portion of any building at a location designated in the Application which is occupied by the insured as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls, or stairways. As respects Insuring Agreements I and II only, the premises shall also include the space immediately surrounding such building, provided such space is occupied by the insured in conducting his business.

(d) *Custodian.* "Custodian" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property within the premises, excluding any person while acting as a watchman, porter, or janitor.

(e) *Messenger.* "Messenger" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property outside the premises.

(f) *Robbery.* "Robbery" or "robbery, including observed theft," means the taking of insured property (1) by violence inflicted upon a messenger or a custodian; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by an officer, partner, or employee of the insured; (4) from the person or direct care and custody of a messenger or custodian who has been killed or rendered unconscious; (5) from within the premises by compelling a messenger or custodian by violence or threat of violence while outside the premises to admit a person into the premises or to furnish him with means of ingress into the premises; or (6) from a showcase or show window within the premises while regularly open for business, by a person who has broken the glass thereof from outside the premises.

(g) *Robbery of a watchman.* "Robbery of a watchman" means a felonious taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

(h) *Burglary.* "Burglary" or "burglary and larcency incident thereto" means the felonious abstraction of insured property from within the premises by a person making felonious entry therein by actual force and violence, evidenced by visible marks upon, or physical damage to, the exterior of the premises at the place of such entry.

(i) *Safe burglary.* "Safe burglary" or "safe burglary and larcency incident thereto" means (1) the felonious abstraction of insured property from within a vault or safe, the door of which is equipped with a combination lock, located within the premises, by a person making felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, evidenced by visible marks upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom, or walls of such vault or such safe and any vault containing the safe through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the premises.

(j) *Jewelry.* "Jewelry" means jewelry, watches, gems, precious or semiprecious stones, and articles containing one or more gems.

(k) *Loss.* "Loss," except as used in Insuring Agreements I through V, includes damage.

(l) *Class E Safe.* "Class E Safe" means a steel safe having walls at least 1 inch thick and doors at least 1½ inches thick, or a vault of steel at least ½ inch thick or of reinforced concrete or stone at least 9 inches thick or of non-reinforced concrete or stone at least 12 inches thick, with steel doors at least 1½ inches thick.

2. *Ownership of property; interests covered.* The insured property may be owned by the insured or held by him in any capacity, whether or not the insured is liable for the loss thereof: *Provided,* That the insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. *Joint insured.* If more than one insured is named in the Application, the insured first named shall act for every insured for all purposes of this Policy. Knowledge possessed or discovery made by any insured shall, for all purposes, constitute knowledge possessed or discovery made by every insured.

4. *Books and records.* The insured shall keep records of all the insured property in such manner that the Insurer can accurately determine therefrom the amount of loss, and if the insured maintains cash funds for the purpose of check cashing, a complete record of each check negotiated shall be kept by the insured showing the names of the maker, payee and drawee bank, and the date and amount of the check, and such rec-

ords shall be maintained in a receptacle other than used for money and securities.

5. *Limits of liability; settlement options.* The Insurer shall not be liable on account of any loss unless the amount of such loss shall exceed the amount of the deductible described in the Application which is made a part of this Policy and the Insurer shall then be liable only for such excess over and above the deductible, subject to and within the limit of insurance covered by the Policy.

The limit of the Insurer's liability for loss shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor as respects securities the actual cash value thereof at the close of business on the business day next preceding the day on which the loss was discovered, nor as respects other property the actual cash value thereof at the time of loss: *Provided, however,* That the actual cash value of such other property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The applicable limit of insurance stated in the Application is the total limit of the Insurer's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

The Insurer may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Insurer. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Insurer, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

6. *Insured's duties when loss occurs.* Upon knowledge or discovery of loss or of an occurrence which may give rise to a claim for loss, the insured shall: (a) Give notice thereof as soon as practicable to law enforcement authorities and to the insurer through any of its authorized agents, and (b) file detailed proof of loss, duly sworn to, with the Insurer through its authorized agents within sixty (60) days after the discovery of loss.

Upon the Insurer's request, the insured and every claimant hereunder shall submit to examination by the Insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as the Insurer shall designate, and shall cooperate with the Insurer in all matters pertaining to loss or claims with respect thereto.

7. *Other insurance.* If there is any other valid and collectible insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance; provided, that the insurance shall not apply (a) to property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by the insured.

8. *No benefit to bailee.* The insurance afforded by this Policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

9. *Appraisal.* If the Insured and the Insurer fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty (60) days after receipt of proof of loss by the Insurer, appoint a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place within thirty (30) days after the two appraisers are appointed. If the appraisers fail to agree, they shall jointly select a competent and disinterested third appraiser and submit the question to him within fifteen (15) days thereafter. The first two appraisers shall state separately the actual cash value at time of loss and the amount of the loss. Subsequent agreement in writing by any two of the three appraisers within thirty (30) days after the third appraiser was selected shall be considered by the Insurer in determining the amount of the loss but shall not be considered binding upon him and shall not be admissible as such in court. The insured and the Insurer shall each pay its chosen appraiser and shall bear equally the expenses of the third appraiser and the other expenses of appraisal. The Insurer shall not be held to have waived any of its rights by any act relating to appraisal.

10. *Action against insurer.* No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been compliance with all the terms of this Policy and the applicable regulations of the Federal Insurance Administration, nor until ninety (90) days after the required proofs of loss have been filed with the Insurer, nor at all unless commenced within 2 years from the date when the insured discovers the loss and within 1 year after the date upon which the claimant received written notice of dis-

allowance or partial disallowance of the claim. Any such action shall be brought in a U.S. district court, as required by 12 U.S.C. 1749bbb-11.

11. *Subrogation.* In the event of any payment under this Policy, the Insurer shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

12. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from the asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or challenged, except by endorsement issued to form a part of this Policy, as approved by the Federal Insurance Administrator.

13. *Cancellation.* This Policy may be cancelled by the insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. The grounds for cancellation of coverage by the Insurer shall be limited to those set forth in Subchapter B, Parts 80 et seq., Chapter I, Title 44 of the Code of Federal Regulations. Except as otherwise provided by such regulations, notice of cancellation by the Insurer shall be mailed to the named insured at the address shown in this Policy, stating when not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named insured or by the Insurer shall be equivalent to mailing. In the event of cancellation, earned premium shall be computed in accordance with the customary short rate table and procedure, unless otherwise specifically provided in said Regulations issued by the Insurer. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

14. *Assignment.* Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon; if, however, the insured shall die, this Policy shall cover the insured's legal representative as insured; provided that notice of cancellation addressed to the insured named in the Application and mailed to the address shown in this Policy shall be sufficient notice to effect cancellation of this Policy.

15. *Declarations.* By signing the Application or by acceptance of this Policy the insured certifies and agrees, under penalty of Federal law dealing with fraud and false representation (18 U.S.C. 1001), that the statements in the Application are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations, that he is aware of the applicability of the regulations issued by the Insurer, and that this Policy and said regulations embody all agreements existing between himself and the Insurer or any of its agents relating to this insurance.

In witness whereof, the Federal Insurance Administrator has accepted the declarations of the insured set forth in the Application and has caused this Policy to be issued.

________________________,

Federal Insurance Administrator.

(c) Such endorsements to the Commercial Crime Insurance Policy forms as the insurer may approve.

[36 FR 24774, Dec. 22, 1971, as amended at 38 FR 19687, July 23, 1973. Redesignated at 44 FR 31177, May 31, 1979]

PART 84—CLASSIFICATION OF TERRITORIES

Sec.
84.1 Method of classifying territories.
84.2 List and classification of territories.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb-17; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated Mar. 31, 1979 (44 FR 19367) and delegation of authority to Federal Insurance Administrator (44 FR 20963).

§ 84.1 Method of classifying territories.

(a) Because rates are related to urban population concentrations rather than to State boundaries, the insurer has determined that the interests of the public will be best served by classifying territories for the purposes of the Federal crime insurance program on the basis of statistics applicable to entire Standard Metropolitan Statistical Areas, generally referred to as "SMSA's."

(b) Under the classification system prescribed by this part, all communities within the same SMSA shall be assigned the same rating classification, regardless of the State in which they are situated. However, no community within any SMSA will actually be eligible for the sale of Federal crime insurance unless the State in which it is situated is then currently eligible.

(c) Eligible communities that are not part of SMSA's shall be assigned the same territorial classification as the remainder of the State, regardless of the size of the community.

[36 FR 24781, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979]

§ 84.2 List and classification of territories.

(a) Territories shall be classified for statistical and rating purposes as set forth in the insurer's Crime Insurance Manual, which shall apply to all crime insurance policies written under the program. Such manual shall be supplied by the servicing company on behalf of the insurer to all eligible agents and brokers within an eligible State.

(b) The "Territories" section of the Federal Crime Insurance manual shall read as follows:

FEDERAL INSURANCE ADMINISTRATION

CRIME INSURANCE MANUAL

Territories

A. The Territorial arrangement for each state is as follows:

(1) If Standard Metropolitan Statistical Areas Exist, they are individually rated.

(2) The remainder of the State is placed in a single category.

B. *Standard Metropolitan Statistical Areas.* The Standard Metropolitan Statistical Area (SMSA) have been adopted as statistical units in order to make it possible for all Federal agencies to utilize the same boundaries in publishing data useful for analyzing metropolitan areas. The general concept of a metropolitan area is one of an integrated economic and social unit with a recognized population nucleus. "SMSA's Are Not Limited to a Single State or a Single City." Since this approach differs from conventional insurance practices, caution is necessary in rating the risk. For example, parts of Maryland and Virginia are in the Washington, D.C., SMSA.

C. *Grading.* Each SMSA and each Remainder of State is classified into one of three territories for rating purposes, viz:

Territory 3	High risk.
Territory 2	Average risk.
Territory 1	Low risk.

D. *Rating of SMSA's:*

SMSA	Statistical code	Rate territory
Abilene, Tex. (includes Taylor and Jones Counties)	0040	2
Akron, Ohio (includes Summit and Portage Counties)	0080	2
Albany, Ga. (includes Dougherty County)	0120	1
Albany-Schenectady-Troy, N.Y. (includes Albany, Rensselaer, Saratoga, and Schenectady Counties)	0160	1
Albuquerque, N. Mex. (includes Bernalillo County)	0200	3
Allentown-Bethlehem-Easton, Pa.-N.J. (includes Lehigh and Northampton Counties, Pa. and Warren County, N.J.)	0240	2
Altoona, Pa. (includes Blair County)	0280	1
Amarillo, Tex. (includes Potter and Randall Counties)	0320	2
Anaheim-Santa Ana-Garden Grove, Calif. (includes Orange County)	0360	3
Anderson, Ind. (includes Madison County)	0400	2
Ann Arbor, Mich. (includes Washtenaw County)	0440	3
Appleton-Oshkosh, Wis. (includes Calumet, Outagamie, and Winnebago Counties)	0460	1
Asheville, N.C. (includes Buncombe County)	0480	2
Atlanta, Ga. (includes Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties)	0520	2
Atlantic City, N.J. (includes Atlantic County)	0560	3
Augusta, Ga.-S.C. (includes Richmond County, Ga. and Aiken County, S.C.)	0600	2
Austin, Tex. (includes Travis County)	0640	2
Bakersfield, Calif. (includes Kern County)	0680	3
Baltimore, Md. (includes Baltimore City and Anne Arundel, Baltimore, Carroll, Howard, and Hartford Counties)	0720	2
Baton Rouge, La. (includes East Baton Rouge Parish)	0760	2
Bay City, Mich. (includes Bay County)	0800	2
Beaumont-Port Arthur, Tex. (includes Jefferson and Orange Counties	0840	2
Billings, Mont. (includes Yellowstone County)	0880	1
Biloxi-Gulfport, Miss. (includes Harrison County)	0920	1
Binghamton, N.Y.-Pa. (includes Broome and Tioga Counties, N.Y. and Susquehanna County, Pa.)	0960	1
Birmingham, Ala. (includes Jefferson, Shelby, and Walker Counties)	1000	2
Bloomington-Normal, Ill. (includes McLean County)	1040	2
Boise, Idaho (includes Ada County)	1080	2
Boston-Lowell, Mass. (includes Middlesex, Norfolk, Plymouth, and Suffolk Counties)	1120	2
Bridgeport-Stamford-Norwalk, Conn. (includes Fairfield County)	1160	2
Brownsville-Harlingen-San Benito, Tex. (includes Cameron County)	1240	2
Bryan-College Station, Tex. (includes Brazos County)	1260	1

SMSA	Statistical code	Rate territory
Buffalo, N.Y. (includes Erie and Niagara Counties)	1280	2
Canton, Ohio (includes Stark County)	1320	2
Cedar Rapids, Iowa (includes Linn County)	1360	2
Champaign-Urbana, Ill. (includes Champaign County)	1400	2
Charleston, S.C. (includes Charleston and Berkeley Counties)	1440	2
Charleston, W. Va. (includes Kanawha County)	1480	2
Charlotto, N.C. (includes Mecklenburg and Union Counties)	1520	2
Chattanooga, Tenn.-Ga. (includes Hamilton County, Tenn., and Walker County, Ga.)	1560	2
Chicago, Ill. (includes Cook, Du Page, Kane, Lake, McHenry, and Will Counties)	1600	2
Cincinnati, Ohio-Ky.-Ind. (includes Hamilton, Clermont and Warren Counties, Ohio, and Campbell, Kenton, and Boone Counties, Ky., and Dearborn County, Ind.)	1640	2
Cleveland, Ohio (includes Cuyahoga, Lake, Geauga, and Medina Counties)	1680	2
Colorado Springs, Colo. (includes El Paso County)	1720	2
Columbia, Mo. (includes Boone County)	1740	2
Columbia, S.C. (includes Lexington and Richland Counties)	1760	2
Columbus, Ga.-Ala. (includes Chattahoochee and Muscogee Counties, Ga., and Russell County, Ala.)	1800	2
Columbus Ohio (includes Franklin, Delaware, and Pickaway Counties)	1840	2
Corpus Christi, Tex. (includes Nueces and San Patricio Counties)	1880	2
Dallas, Tex. (includes Collin, Dallas, Denton, Ellis, Kaufman, and Rockwall Counties)	1920	2
Davenport-Rock Island-Moline, Iowa-Ill. (includes Scott County, Iowa, and Rock Island and Henry Counties, Ill.)	1960	2
Dayton, Ohio (includes Greene, Miami, Montgomery, and Preble Counties)	2000	2
Daytona Beach, Fla. (Voluisa County)	2020	3
Decatur, Ill. (includes Macon County)	2040	2
Denver, Colo. (includes Adams, Arapahoe, Boulder, Denver, and Jefferson Counties)	2080	3
Des Moines, Iowa (includes Polk County)	2120	2
Detroit, Mich. (includes Macomb, Oakland, and Wayne Counties)	2160	1
Dubuque, Iowa	2200	3
Duluth-Superior, Minn.-Wis. (includes St. Louis County, Minn., and Douglas County, Wis.)	2240	2
Durham, N.C. (includes Durham and Orange Counties)	2280	2
Elmira, N.Y. (Chemung County)	2335	1
El Paso, Tex. (includes El Paso County)	2320	3
Erie, Pa. (includes Erie County)	2360	2
Eugene, Oreg. (includes Lane County)	2400	2
Evansville, Ind.-Ky. (includes Vanderburgh and Warwick Counties, Ind., and Henderson County, Ky.)	2440	2
Fall River-New Bedford, Mass. (includes Bristol County)	2480	3
Fargo-Moorhead. N. Dak.-Minn. (includes Cass County, N. Dak., and Clay County, Minn.)	2520	2
Fayetteville, N.C. (includes Cumberland County)	2560	2
Flint, Mich. (includes Genesee and Lapeer Counties).	2640	2
Fort Lauderdale-Hollywood, Fla. (includes Broward County)	2680	3
Fort Smith, Ark.-Okla. (includes Sebastian and Crawford Counties, Ark., and LeFlore and Sequoyah Counties, Okla.)	2720	1
Fort Wayne, Ind. (includes Allen County)	2760	2
Fort Worth, Tex. (includes Johnson and Tarrant Counties)	2800	2
Fresno, Calif. (includes Fresno County)	2840	3
Gadsden, Ala. (includes Etowah County)	2880	1
Gainesville, Fla. (includes Alachua County)	2900	2
Galveston-Texas City, Tex. (includes Galveston County)	2920	2
Gary-Hammond-East Chicago, Ind. (includes Lake and Porter Counties)	2960	3
Grand Rapids, Mich. (includes Kent and Ottawa Counties)	3000	2
Great Falls, Mont. (includes Cascade County)	3040	1
Green Bay, Wis. (includes Brown County)	3080	1
Greensboro-High Point-Winston-Salem, N.C. (includes Forsyth, Guilford, Randolph, and Yadkin Counties)	3120	2
Greenville, S.C. (includes Greenville and Pickens Counties)	3160	2
Hamilton-Middletown, Ohio (includes Butler County)	3200	2
Harrisburg, Pa. (includes Cumberland, Dauphin, and Perry Counties)	3240	1
Hartford-New Britain-Bristol, Conn. (includes Hartford and Middlesex Counties)	3280	2
Honolulu, Hawaii (includes Honolulu County)	3320	3
Houston, Tex. (includes Harris, Brazoria, Fort Bend, Liberty, and Montgomery Counties)	3360	2
Huntington-Ashland, W. Va.-Ky.-Ohio (includes Cabell and Wayne Counties, W. Va., Boyd County, Ky., and Lawrence County, Ohio)	3400	2
Huntsville, Ala. (includes Madison and Limestone Counties)	3440	2
Indianapolis, Ind. (includes Marion, Hamilton, Hancock, Hendricks, Johnson, Morgan, Shelby, and Boone Counties)	3480	2
Jackson, Mich. (includes Jackson County)	3520	2
Jackson, Miss. (includes Hinds and Ranking Counties)	3560	2
Jacksonville, Fla. (includes Duval County)	3600	3
Jersey City, N.J. (includes Hudson County)	3640	2
Johnstown, Pa. (includes Cambria and Somerset Counties)	3680	1
Kalamazoo, Mich. (includes Kalamazoo County)	3720	2

SMSA	Statistical code	Rate territory
Kansas City, Mo.-Kans. (includes Clay, Jackson, Cass, and Platte Counties Mo., and Johnson and Wyandotte Counties, Kans.)	3760	2
Kenosha, Wis. (includes Kenosha County)	3800	2
Knoxville, Tenn. (includes Anderson, Blount, and Knox Counties)	3840	2
La Crosse, Wis. (includes La Crosse County)	3870	2
Lafayette, La. (includes Lafayette Parish)	3880	2
Lafayette-West Lafayette, Ind. (includes Tippecanoe County)	3920	2
Lake Charles, La. (includes Calcasieu Parish)	3960	2
Lancaster, Pa. (includes Lancaster County)	4000	1
Lansing, Mich. (includes Clinton, Eaton, and Ingham Counties)	4040	3
Laredo, Tex. (includes Webb County)	4080	1
Las Vegas, Nev. (includes Clark County)	4120	3
Lawrence-Haverhill, Mass.-N.H. (includes Merrimack, and Rockingham Counties, N.H., and Essex County, Mass.)	4160	2
Lawton, Okla. (includes Comanche County)	4200	2
Lewiston-Auburn, Maine (includes Androscoggin County)	4240	1
Lexington, Ky. (includes Fayette County)	4280	3
Lima, Ohio (includes Allen, Putnam, and Van Wert Counties)	4320	2
Lincoln, Nebr. (includes Lancaster County)	4360	2
Little Rock-North Little Rock, Ark. (includes Pulaski and Saline Counties)	4400	2
Lorain-Elyria, Ohio (includes Lorain County)	4440	2
Los Angeles-Long Beach, Calif. (includes Los Angeles County)	4480	3
Louisville, Ky.-Ind. (includes Jefferson County, Ky., and Clark and Floyd Counties, Ind.)	4520	
Lubbock, Tex. (includes Lubbock County)	4600	2
Lynchburg, Va. (includes Lynchburg City and Amherst and Campbell Counties)	4640	1
Macon, Ga. (includes Bibb and Houston Counties)	4680	2
Madison, Wis. (includes Dane County)	4720	2
Manchester, N.H. (includes Hillsboro County)	4760	1
Mansfield, Ohio (includes Richland County)	4800	2
McAllen-Pharr-Edinburg, Tex. (includes Hidalgo County)	4880	1
Memphis, Tenn.-Ark. (includes Shelby County, Tenn., and Crittenden County, Ark.)	4920	2
Meriden, Conn	4960	1
Miami, Fla. (includes Dade County)	5000	3
Midland, Tex. (includes Midland County)	5040	1
Milwaukee, Wis. (includes Milwaukee, Waukesha, Ozaukee, and Washington Counties)	5080	2
Minneapolis-St. Paul, Minn. (includes Anoka, Dakota, Hennepin, Ramsey and Washington Counties)	5120	2
Mobile, Ala. (includes Mobile and Baldwin Counties)	5160	2
Modesto, Calif. (includes Stanislaus County)	5170	3
Monroe, La. (includes Ouachita Parish)	5200	1
Montgomery, Ala. (includes Elmore and Montgomery Counties)	5240	2
Muncie, Ind. (includes Delaware County)	5280	2
Muskegon-Muskegon Heights, Mich. (includes Muskegon County)	5320	2
Nashville, Tenn. (includes Davidson, Sumner, and Wilson Counties)	5360	2
Newark, N.J. (includes Essex, Morris, and Union Counties)	5640	2
New Haven-Waterbury, Conn. (includes New Haven County)	5480	2
New London-Groton-Norwich, Conn. (includes New London County)	5520	2
New Orleans, La. (includes Jefferson, Orleans, St. Bernard, and St. Tammany Parishes)	5560	3
Newport News-Hampton, Va. (includes Newport News and Hampton Cities and York County)	5680	2
New York, N.Y. (includes Bronx, Kings, New York, Queens, Richmond, Nassau, Rockland, Suffolk, and Westchester Counties)	5600	3
Norfolk-Portsmouth, Va. (includes Norfolk, Chesapeake, Portsmouth, and Virginia Beach Cities)	5720	2
Odessa, Tex. (includes Ector County)	5800	1
Ogden, Utah (includes Weber County)	5840	2
Oklahoma City, Okla. (includes Canadian, Cleveland, and Oklahoma Counties)	5880	2
Omaha, Nebr.-Iowa (includes Douglas and Sarpy Counties, Nebr., and Pottawattamie County, Iowa)	5920	2
Orlando, Fla. (includes Orange and Seminole Counties)	5960	2
Owensboro, Ky. (includes Davies County)	5990	2
Oxnard-Ventura, Calif. (includes Ventura County)	6000	2
Parkersburg-Marietta, W. Va., Ohio (Wood County, W. Va., Washington County, Ohio)	6020	1
Paterson-Clifton-Passaic, N.J. (includes Bergen and Passaic Counties)	6040	2
Pensacola, Fla. (includes Escambia and Santa Rosa Counties)	6080	2
Peoria, Ill. (includes Peoria, Tazwell, and Woodford Counties)	6120	2
Petersburg, Colonial Heights, Va. (includes Petersburg, Colonial Heights, and Hopewell Cities and Prince George and Dinwiddie Counties)	6140	1
Philadelphia, Pa.-N.J. (includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, Pa., and Burlington, Camden, and Gloucester Counties, N.J.)	6160	2
Phoenix, Ariz. (includes Maricopa County)	6200	3
Pine Bluff, Ark. (includes Jefferson County)	6240	1

SMSA	Statistical code	Rate territory
Pittsburgh, Pa. (includes Allegheny, Beaver, Washington, and Westmoreland Counties)	6280	2
Pittsfield, Mass. (includes Berkshire County)	6320	1
Portland, Maine (includes Cumberland County)	6400	2
Portland, Oreg.-Wash. (includes Clackamas, Multnomah, and Washington Counties, Oreg., and Clark County, Wash.)	6440	3
Poughkeepsie. N.Y. (Duchess County)	6460	1
Providence-Pawtucket-Warwick, R.I. (includes entire State)	6480	2
Provo-Orem, Utah (includes Utah County)	6520	1
Pueblo, Colo. (includes Pueblo County)	6560	2
Racine, Wis. (includes Racine County)	6600	2
Raleigh, N.C. (includes Wake County)	6640	
Reading, Pa. (includes Berks County)	6680	1
Reno, Nev. (includes Washoe County)	6720	3
Richmond, Va. (includes Richmond City and Chesterfield, Henrico, and Hanover Counties)	6760	3
Roanoke, Va. (includes Roanoke City and Roanoke County)	6800	2
Rochester, Minn. (includes Olmsted County)	6820	1
Rochester, N.Y. (includes Monroe, Livingston, Orleans, and Wayne Counties)	6840	2
Rockford, Ill. (includes Winnebago and Boone Counties)	6880	2
Sacramento, Calif. (includes Sacramento, Placer, and Yolo Counties)	6920	3
Saginaw, Mich. (includes Saginaw County)	6960	3
St. Joseph, Mo. (includes Buchanan County)	7000	1
St. Louis, Mo.-Ill. (includes St. Louis City and Jefferson, St. Charles, St. Louis, and Franklin Counties, Mo., and Madison and St. Clair Counties, Ill.)	7040	2
Salem, Oreg. (includes Marion and Polk Counties)	7080	2
Salinas-Monterey, Calif. (includes Monterey County)	7120	2
Salt Lake City, Utah (includes Salt Lake and Davis Counties)	7160	2
San Angelo, Tex. (includes Tom Green County)	7200	1
San Antonio, Tex. (includes Bexar and Guadalupe Counties)	7240	2
San Bernardino-Riverside-Ontario, Calif. (includes Riverside and San Bernardino Counties)	7280	
San Diego, Calif. (includes San Diego County)	7320	2
San Francisco-Oakland, Calif. (includes Alameda, Contra Costa, Marin, San Francisco, and San Mateo Counties)	7360	3
San Jose, Calif. (includes Santa Clara County)	7400	2
Santa Barbara, Calif. (includes Santa Barbara County)	7480	2
Santa Cruz, Calif	7485	3
Santa Rosa, Calif. (includes Sonoma County)	7500	3
Savannah, Ga. (includes Chatham County)	7520	3
Scranton, Pa. (includes Lackawanna County)	7560	1
Seattle-Everett, Wash. (includes King and Snohomish Counties)	7600	3
Sherman-Denison, Tex. (includes Grayson County)	7640	1
Shreveport, La. (includes Bossier and Caddo Parishes)	7680	2
Sioux City, Iowa-Nebr. (includes Woodbury County, Iowa, and Dakota County, Nebr.)	7720	2
Sioux Falls, S. Dak. (includes Minnehaha County)	7760	1
South Bend, Ind. (includes St. Joseph and Marshall Counties)	7800	2
Spokane, Wash. (includes Spokane County)	7840	2
Springfield, Ill. (includes Sangamon County)	7880	2
Springfield, Mo. (includes Greene County)	7920	2
Springfield, Ohio (includes Clark County)	7960	2
Springfield-Chicopee-Holyoke, Mass. (includes Hampden and Hampshire Counties, Mass., and Tolland County, Conn.)	8000	2
Steubenville-Weirton, Ohio-W. Va. (includes Jefferson County, Ohio, and Brooke and Hancock Counties, W. Va.)	8080	1
Stockton, Calif. (includes San Joaquin County)	8120	3
Syracuse, N.Y. (includes Madison, Onondaga, and Oswego Counties)	8160	2
Tacoma, Wash. (includes Pierce County)	8200	2
Tallahassee, Fla. (includes Leon County)	8240	2
Tampa-St. Petersburg, Fla. (includes Hillsborough and Pinellas Counties)	8280	3
Terre Haute, Ind. (includes Vigo, Clay, Sullivan, and Vermillion Counties)	8320	2
Texarkana, Tex.-Ark. (includes Bowie County, Tex., and Miller County, Ark.)	8360	2
Toledo, Ohio-Mich. (includes Lucas and Wood Counties, Ohio, and Monroe County, Mich.)	8400	2
Topeka, Kans. (includes Shawnee County)	8440	2
Trenton, N.J. (includes Mercer County)	8480	3
Tucson, Ariz. (includes Pima County)	8520	2
Tulsa, Okla. (includes Creek, Osage, and Tulsa Counties)	8560	2
Tuscaloosa, Ala. (includes Tuscaloosa County)	8600	2
Tyler, Tex. (includes Smith County)	8640	1
Utica-Rome, N.Y. (includes Herkimer and Oneida Counties)	8680	1
Vallejo-Napa, Calif. (includes Solano and Napa Counties)	8720	3
Vineland-Millville-Bridgeton, N.J. (includes Cumberland County)	8760	2
Waco, Tex. (includes McLennan County)	8800	2
Waterbury, Conn. (includes Litchfield County)	8880	2

SMSA	Statistical code	Rate territory
Washington, D.C.-Md.-Va. (includes District of Columbia, Montgomery and Prince Georges Counties, Md., Alexandria, Fairfax, and Falls Church cities, and Arlington, Fairfax, Loudoun, and Prince William Counties, Va.)	8840	2
Waterloo, Iowa (includes Black Hawk County)	8920	2
West Palm Beach, Fla. (includes Palm Beach County)	8960	3
Wheeling, W. Va.-Ohio (includes Marshall and Ohio Counties, W. Va., and Belmont County, Ohio)	9000	1
Wichita, Kans. (includes Sedgwick and Butler Counties)	9040	2
Wichita Falls, Tex. (includes Archer and Wichita Counties)	9080	2
Wilkes-Barre-Hazleton, Pa. (includes Luzerne County)	9120	1
Wilmington, Del.-N.J.-Md. (includes New Castle County, Del., Salem County, N.J., and Cecil County, Md.)	9160	2
Wilmington, N.C. (includes New Hanover and Brunswick Counties)	9200	2
Worcester, Mass. (includes Worcester County)	9240	2
York, Pa. (includes York and Adams Counties)	9280	1
Youngstown-Warren, Ohio (includes Mahoning and Trumbull Counties)	9320	2

RATING OF REMAINDER OF STATE TERRITORIES (EXCLUSIVE OF SMSA'S)

State	Statistical code	Rate territory	Counties and independent cities which are in SMSA's listed above (see SMSA list for rate territory)
Alabama	401	1	Baldwin, Elmore, Etowah, Jefferson, Limestone, Madison, Mobile, Montgomery, Russell, Shelby, Tuscaloosa, Walker.
Alaska	002	2	None.
Arizona	090	2	Maricopa, Pima.
Arkansas	605	1	Crawford, Crittenden, Jefferson, Miller, Pulaski, Saline, Sebastian.
California	906	2	Alameda, Contra Costa, Fresno, Kern, Los Angeles, Marin, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, Stanislaus, Ventura, Yolo.
Colorado	809	2	Adams, Arapahoe, Boulder, Denver, El Paso, Jefferson, Pueblo.
Connecticut	109	1	All counties except Windham.
Delaware	310	2	New Castle.
Florida	041	2	Alachua, Broward, Dade, Duval, Escambia, Hillsborough, Leon, Orange, Palm Beach, Pinellas, Santa Rosa, Seminole.
Georgia	413	1	Bibb, Chatham, Chattahoochee, Clayton, Cobb, De Kalb, Dougherty, Fulton, Gwinnett, Houston, Muscogee, Richmond, Walker.
Hawaii	915	2	Honolulu.
Idaho	101	2	Ada.
Illinois	051	1	Boone, Champaign, Cook, Du Page, Henry, Kane, Lake, McHenry, McLean, Macon, Madison, Peoria, Rock Island, St. Clair, Sangamon, Tazewell, Will, Winnebago, Woodford.
Indiana	518	1	Allen, Boone, Clark, Clay, Dearborn, Delaware, Floyd, Hamilton, Hancock, Hendricks, Johnson, Lake, Madison, Marion, Marshall, Morgan, Porter, St. Joseph, Shelby, Sullivan, Tippecanoe, Vanderburgh, Vermillion, Vigo, Warrick.
Iowa	719	1	Black Hawk, Dubuque, Linn, Polk, Pottawattamie, Scott, Woodbury.
Kansas	721	1	Butler, Kearny, Sedgwick, Shawnee, Wyandotte.
Kentucky	421	1	Boone, Boyd, Campbell, Daviess, Henderson, Jefferson, Kenton.
Louisiana	622	1	Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Orleans, Ouachita, St. Bernard, St. Tammany.
Maine	123	1	Androscoggin, Cumberland.
Maryland	325	1	Ann Arundel, Baltimore (city and county), Carroll, Cecil, Harford, Howard, Montgomery, Prince Georges.
Massachusetts	125	2	Berkshire, Bristol, Essex, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk, Worcester.
Michigan	526	2	Bay, Clinton, Eaton, Genesee, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Macomb, Monroe, Muskegon, Oakland, Ottawa, Saginaw, Washtenaw, Wayne.
Minnesota	527	1	Anoka, Clay, Dakota, Hennepin, Olmsted, Ramsey, St. Louis, Washington.
Mississippi	429	1	Harrison, Hinds, Rankin.
Missouri	729	1	Boone, Buchanan, Cass, Clay, Franklin, Greene, Jackson, Jefferson, Platte, St. Charles, St. Louis, St. Louis City.
Montana	830	2	Cascade, Yellowstone.
Nebraska	731	1	Dakota, Douglas, Lancaster, Sarpy.
Nevada	093	2	Clark, Washoe.
New Hampshire	133	2	Hillsborough, Merrimack, Rockingham.

RATING OF REMAINDER OF STATE TERRITORIES (EXCLUSIVE OF SMSA'S)—Continued

State	Statistical code	Rate territory	Counties and independent cities which are in SMSA's listed above (see SMSA list for rate territory)
New Jersey	234	2	All counties except Cape May, Hunterdon, Middlesex, Monmouth, Ocean, Somerset, Sussex.
New Mexico	635	2	Bernalillo.
New York	023	1	Albany, Bronx, Broome, Erie, Herkimer, Kings, Livingston, Madison, Monroe, Nassau, New York, Niagara, Oneida, Onondaga, Oswego, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Suffolk, Tioga, Wayne, Westchester.
North Carolina	437	1	Brunswick, Buncombe, Cumberland, Durham, Forsyth, Guilford, Mecklenburg, New Hanover, Orange, Randolph, Union, Wake, Yadkin.
North Dakota	838	1	Cass.
Ohio	539	1	Allen, Belmont, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Jefferson, Lake, Lawrence, Loran, Lucas, Mahoning, Medina, Miami, Montgomery, Pickaway, Portage, Preble, Putnam, Richland, Stark, Summit, Trumbull, Van Wert, Warren, Wood.
Oklahoma	641	1	Canadian, Cleveland, Comanche, Creek, Le Flore, Oklahoma, Osage, Sequoyah, Tulsa.
Oregon	105	2	Clackamas, Lane, Marion, Multnomah, Polk, Washington.
Pennsylvania	342	1	Adams, Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Chester, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lehigh, Luzerne, Montgomery, Northampton, Perry, Philadelphia, Somerset, Susquehanna, Washington, Westmoreland, York.
Puerto Rico	027	1	Assign all to rate territory 2.
Rhode Island	014	2	All counties in SMSA's.
South Carolina	445	1	Aiken, Berkeley, Charleston, Greenville, Lexington, Pickens, Richland.
South Dakota	846	1	Minnehaha.
Tennessee	447	1	Anderson, Blount, Davidson, Hamilton, Knox, Shelby, Sumner, Wilson.
Texas	649	1	Archer, Bexar, Bowie, Brazoria, Brazos, Cameron, Collin, Dallas, Denton, Ector, Ellis, El Paso, Fort Bend, Grayson, Guadalupe, Harris, Hidalgo, Jefferson, Johnson, Jones, Kaufman, Kinney, Liberty, Lubbock, McLennan, Midland, Montgomery, Nueces, Orange, Potter, Randall, Rockwall, San Patricio, Smith, Tarrant, Taylor, Tom Green, Travis, Webb, Wichita.
Utah	849	1	Davis, Salt Lake, Utah, Weber.
Vermont	150	1	None.
Virginia	351	1	Alexandria, Amherst, Arlington, Campbell, Chesapeake, Chesterfield, Dinwiddie, Fairfax (City and County), Falls Church, Hanover, Hampton, Henrico, Hopewell, Loudoun, Lynchburg, Newport News, Norfolk, Petersburg, Portsmouth, Prince George, Prince William, Richmond, Roanoke (city and county), Virginia Beach, York, Colonial Heights.
Washington	053	2	Clark, King, Pierce, Snohomish, Spokane.
West Virginia	354	1	Brooke, Cabell, Hancock, Kanawha, Marshall, Ohio, Wayne.
Wisconsin	555	1	Brown, Calumet, Dane, Douglas, Kenosha, La Crosse, Milwaukee, Ozaukee, Racine, Washington, Waukesha, Outagamie, Winnebago.
Wyoming	085	2	None.

[36 FR 24781, Dec. 22, 1971, as amended at 38 FR 3314, Feb. 5, 1973; 39 FR 6607, Feb. 21, 1974. Redesignated at 44 FR 31177, May 31, 1979]

PARTS 85—149—[RESERVED]

SUBCHAPTER C—FIRE PREVENTION AND CONTROL

NOTE: Nomenclature changes to Subchapter C appear at 44 FR 56172, Sept. 28, 1979.

PART 150—PUBLIC SAFETY AWARDS TO PUBLIC SAFETY OFFICERS

Sec.
150.1 Background and purpose.
150.2 Definitions.
150.3 Nomination process.
150.4 Nomination and selection criteria.
150.5 Joint Public Safety Awards Board.
150.6 Design and procurement of awards.
150.7 Selection process.
150.8 Presentation of awards.
150.9 Funding.
150.10 Effective date.

AUTHORITY: Federal Fire Prevention and Control Act of 1974, Sec. 15, Pub. L. 93-498, 88 Stat. 1544-45 (15 U.S.C. 2214); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to United States Fire Administrator.

SOURCE: 42 FR 52402, Sept. 30, 1977, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

§ 150.1 Background and purpose.

The regulations in this part are issued under the authority of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 et seq., 278f, 42 U.S.C. 290(a)). That Act establishes two clases of honorary awards for public safety officers and directs the issuance of the necessary joint regulations by the U.S. Fire Administrator, the Secretary of Defense, and the Attorney General. The Secretary of Commerce has delegated authority, pursuant to DOO 25-6A for the issuance of the required regulations to the Administrator, United States Fire Administration. The Administrator has obtained the approval of the Secretary of Defense and the Attorney General to issue these regulations to implement the statutory provisions on behalf of the three agencies concerned.

§ 150.2 Definitions.

(a) "Civil defense officer (or member of a recognized civil defense preparedness organization)" means any individual who is assigned to and is performing the assigned tasks of the unit or organization which has been given a mission under the direction or operational control of a Civil Defense Director/Coordinator in accordance with a Federal, State or local emergency plan and sanctioned by the government concerned.

(b) "Firefighter" means a member, regardless of rank or duties, or any organization (including such Federal organizations) in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire. This term includes volunteers or paid employees. The location of any such organization may include, but is not limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district or other special district.

(c) "Joint Board" means that Joint Public Safety Awards Board established by the U.S. Fire Administrator, the Secretary of Defense, and the Attorney General to carry out the purposes of the Federal Fire Prevention and Control Act of 1974 [Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 et seq., 278f, 42 U.S.C. 290(a)] and this part.

(d) "Law enforcement officer" means a person involved in the control or reduction of crime and juvenile delinquency or enforcement of the criminal laws. This includes, but is not limited to police, corrections, probation, parole, and court officers, and Federal officers in such capacities.

(e) "Nominating Official" means the head of a Federal government department or agency, or his delegate(s), the governor or other head of a State, or the Chief executive or executives of any general governmental unit within any State.

(f) "President's Award" means the President's Award for Outstanding Public Safety Service, presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contributions to public safety.

(g) "Public safety officer" means a person serving a public agency with or without compensation, as a firefighter, a civil defense officer (or member of a recognized civil defense preparedness organization), or a law enforcement officer, including a corrections or court officer.

(h) "Secretary" means either the U.S. Fire Administrator, the Secretary of Defense, or the Attorney General, individually.

(i) "Secretaries" means the U.S. Fire Administrator, the Secretary of Defense and the Attorney General, collectively.

(j) "Secretary's Award" means the Secretary's Award for Distinguished Public Safety Service, presented to public safety officers for distinguished service in the field of public safety.

(k) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

§ 150.3 Nomination process.

(a) The Nominating Officials shall submit their nominations for the Secretary's Award to the appropriate Secretary depending upon the category of the nominee involved, as follows:

(1) A firefighter: U.S. Fire Administration, Attention: Administrator, United States Fire Administration, Washington, D.C. 20472.

(2) A civil defense officer (or member of a recognized civil defense preparedness organization): Associate Director, Plans & Preparedness, Federal Emergency Management Agency, Washington, DC 20472.

(3) A law enforcement, corrections or court officer: Assistant Attorney General for Administration, Office of Management and Finance, U.S. Department of Justice, Washington, D.C. 20530.

(b) The Nominating Officials shall submit their nominations for the President's Award to the Executive Secretary, Joint Public Safety Awards Board, United States Fire Administration, Washington, D.C. 20472.

(c) All nominations shall be submitted in writing in accordance with the requirements prescribed in this section and § 150.4 at the earliest practicable date after the performance of the act or acts for which the nomination is made. Nominations for each year shall be made before November 15; any received thereafter will be considered as having been made for the following year.

(d) Nominations for the President's Award or the Secretary's Award should include the name of the candidate, his/her position, title and address, the public agency served, the locale where the candidate performs his/her duties, the name of the nominating official, a summary describing the outstanding contribution, distinguished service or extraordinary valor, and the dates relating thereto. The description should be sufficiently concise and specific to justify the request for recognition of the public safety officer through the presentation of either of the awards. Copies of any published factual accounts of the nominee's accomplishments should also be attached when available.

(e) An annual invitation shall be issued by the Joint Board for nominations for the President's Award and, on behalf of the respective Secretaries, for the Secretary's Award. Such invitation shall be issued by letter or by notice in appropriate publications of interest to the public safety community. However, nominating officials need not wait for such invitation but may nominate at the most appropriate time in accordance with the other provisions of this part.

[42 FR 52402, Sept. 30, 1977. Redesignated at 44 FR 56172, Sept. 28, 1979 and amended at 44 FR 62517, Oct. 31, 1979]

§ 150.4 Nomination and selection criteria.

(a) Nominations for the President's or Secretary's Award shall be made on the basis of, and in conformity with, the following uniform criteria:

(1) President's Award. Documentation accompanying the nomination for the President's Award must indicate not only that the nominee unquestionably meets the standards established for the Secretary's Award (see paragraph (a)(2) of this section), but also deserves greater public recognition than that afforded by the Secretary's Award because he/she has demonstrated unique qualities of courage, imagination or ability, which have resulted in outstanding contributions to the public safety.

(2) Secretary's Award. The documentation that accompanies the nomination for the Secretary's Award must clearly show that the public safety officer's qualifying service or act is marked by courage, imagination or ability or has resulted in a significant contribution to the public safety accomplished through an originality of effort which far exceeds the expected quality of performance of the normal duties assigned to the nominee.

(b) A nomination shall specify whether it is being submitted for the President's Award or the Secretary's Award.

§ 150.5 Joint Public Safety Awards Board.

(a) A Joint Public Safety Awards Board (Joint Board) is hereby established to fulfill the responsibilities of the Secretaries by administering the process of nomination for the President's Award and by participating in the selection process with the Executive Office of the President. The Joint Board shall consist of nine representatives who are of appropriate rank (at or equivalent to grades GS-14 or above). Three persons shall represent each of the three Secretaries. The representatives serving on the Joint Board shall select one of their number to act as the chairperson.

(b) Representatives on the Joint Board shall serve in addition to their regular duties and without additional compensation. Consistent with the requirements of this part, the members of the Joint Board shall establish the procedures by which the selections for the President's Award shall be made to assure the timely presentation of public safety awards.

(c) A U.S. Fire Administration employee shall act as the Executive Secretary of the Joint Board. The Executive Secretary shall perform such functions as are appropriate to the Board's responsibilities, including the receipt of all nominations, and the communication of nomination information, for the purpose of receiving comments thereon, from members of the public safety community pursuant to § 150.5(e).

(d) The Joint Board shall review the nominations for the President's Award and shall recommend to the Secretaries by February 1 of each year, those nominees determined by it to merit consideration for the President's Award together with the reasons therefor. The Secretaries shall then recommend to the President those nominees determined by them to merit the President's Award, together with the reasons therefor.

(e) The Joint Board may request that persons representing a cross-section of the national public safety community comment upon nominations made to the Board for the President's Award. Both the request for comments and the comments themselves shall be made in writing.

§ 150.6 Design and procurement of awards.

(a) The Joint Board shall consult with the Department of the Treasury and the Executive Office of the President in regard to the design and procurement of the appropriate citations and medal for the President's Award in accordance with applicable laws and regulations.

(b) Insofor as practicable, the designs for the Secretary's Award of the three Departments shall be coordinated so as to avoid distinctly different recognition of the various public safety officers.

§ 150.7 Selection process.

(a) President's Award. Nominations for the President's Award shall be reviewed, and winners selected by the President (or his designee) in accordance with the requirements of § 150.3, the criteria in § 150.4(a)(1), and the procedures of § 150.5.

(b) Secretary's Award. Upon receipt of nominations for the Secretary's Award, the appropriate Secretary shall cause an evaluation and selection of the nominees in accordance with the requirements of § 150.3 and the criteria prescribed in § 150.4(a) (2).

(c) In reviewing a Secretary's Award nomination, the appropriate Secretary may request that persons representing the relevant segment of the national public safety community comment upon the nomination and accompanying documentation. Both the request for comments and the comments themselves shall be made in writing.

(d) Individuals nominated for the President's Award who are considered not to meet the criteria for the Award by the Joint Board or who are not recommended to or selected by the President shall be automatically considered by the appropriated Secretary for presentation of the Secretary's Award.

(e) Individual nominated for a Secretary's Award may be considered by the Joint Board for the President's Award if the appropriate Secretary determines that consideration for the President's Award is merited.

§ 150.8 Presentation of awards.

(a) Presentation of the President's Award shall be made at such time, place and circumstance as the Executive Office of the President directs. There shall not be more than twelve (12) President's Awards given out during any calendar year.

(b) Presentation of the Secretary's Award shall be made by the appropriate Secretary or a designee at such time, place and circumstance as the appropriate Secretary determines.

§ 150.9 Funding.

(a) President's Award. The costs involved in designing and striking the cast for the medal to be presented in conjunction with the President's Award shall be prorated among the three Departments concerned. The cost of producing the medal and printing the certificate for a recipient shall be borne by the Department of Commerce if the recipient is a firefighter, by the Department of Defense if the recipient is a civil defense officer, or by the Department of Justice if the recipient is a law enforcement officer.

(b) Secretary's Award. All expenses in connection with the Secretary's Award shall be borne by the appropriate Department.

§ 150.10 Effective date.

(a) These regulations are effective on January 1, 1978.

(b) Nominations may only be submitted on or after that date for acts, service, or contributions occurring on or after January 1, 1978.

PART 151—REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY

Subpart A—Purpose, Scope, Definitions

Sec.
151.01 Purpose.
151.02 Scope.
151.03 Definitions.

Subpart B—Submission, Determination, Appeal

151.11 Submission of claims.
151.12 Determination of amount authorized for payment.
151.13 Reconsideration of amount authorized for payment.
151.14 Adjudication.

Subpart C—Administration, Penalties

151.21 Effective date.
151.22 Audits.
151.23 Penalties.

AUTHORITY: Secs. 11, and 21(b)(5), Pub. L. 93-498, 88 Stat. 1535 (15 U.S.C. 2210, and 2218(b)(5)); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and delegation of authority to United States Fire Administrator.

SOURCE: 42 FR 36954, July 18, 1977, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

Subpart A—Purpose, Scope, Definitions

§ 151.01 Purpose.

Section 11 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 et seq., 278f, 42 U.S.C. 290(a)), provides that "each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Administrator [USFA] for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire." This part, 44 CFR Part 151, implements section 11 of the Act and governs the submission, determination, and appeal of claims under section 11.

§ 151.02 Scope.

Fire services, in any State, may file claims for reimbursement under section 11 and this part for the direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States. Section 11 requires that certain payments be deducted from those costs and that the Treasury Department will ordinarily pay the amount resulting from the application of that formula. Where the United States has entered into a contract (which is not a mutual aid agreement, defined in § 151.03) for the provision of fire protection, and it is the intent of the parties that reimbursement under section 11 is unavailable, this intent will normally govern. Where a mutual aid agreement is in effect between the claimant and an agency of the United States for the property upon which the fire occurred, reimbursement will be available in otherwise proper situations. However, any payments (including the value of services) rendered under the agreement during the term of the agreement (or the Federal fiscal year in which the fire occurred, if no term is discernible) shall be deducted from the costs claimed, pursuant to § 151.12.

[42 FR 36954, July 18, 1977; 42 FR 37814, July 25, 1977. Redesignated at 44 FR 56172, Sept. 28, 1979]

§ 151.03 Definitions.

(a) "The Act" means the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 et seq., 278f, 42 U.S.C. 290(a)).

(b) "Additional firefighting costs over and above normal operating costs" means reasonable and authorized (or ratified by a responsible Federal official) costs ordinarily associated with the function of firefighting as performed by a fire service. Such costs would normally arise out of response of personnel and apparatus to the site of the fire, search and rescue, exposure protection, fire containment, ventilation, salvage, extinguishment, overhaul, and preparation of the equipment for further use. This would also include costs associated with emergency medical services to the extent normally rendered by a fire service in connection with a fire. Not included are administrative expenses, costs of employee benefits, insurance, disability, death, litigation or health care, and the costs associated with processing claims under Section 11 of the Act and this part.

(c) "Administrator" means the Administrator of the United States Fire Administration, or his designate.

(d) "Claimant" means a fire service as defined in paragraph (g) of this section.

(e) "Direct expenses and losses" means expenses and losses which would not have been incurred had not the fire in question taken place. This includes salaries for specially employed personnel, overtime pay, the cost of supplies expended, and the depreciated value of equipment destroyed or damaged. It does not include such costs as the ordinary wages of firefighters, overhead costs, or depreciation (if based on other than hours of use during fires). Expenses as defined herein, would normally be incurred after the first call or alarm and would normally cease upon the first of the following: return to station, report in-service and ready for further operations, or commence response to another incident.

(f) "Fire" means any instance of destructive or uncontrolled burning, including scorch burns and explosions, of combustible dusts or solids, flammable liquids and gases. The definition does not include the following except where they cause fire or occur as a consequence of fire: lightning or electrical discharge, explosion of steam boilers, hot water tanks, or other pressure vessels, explosions of ammunition or other detonating materials, overheating, mechanical failures, or breakdown of electrical equipment in power transmission facilities, and accidents involving ships, aircraft or other vehicles. Not included in this definition are any costs associated with false alarms, regardless of cause.

(g) "Fire service" means any organization in any State consisting of personnel, apparatus and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district.

(h) "Mutual aid agreement" means any reciprocal agreement whether written or oral between a Federal agency and the claimant fire service, or its parent jurisdiction, for the purpose of providing fire protection for the property of the United States upon which the fire which gave rise to the claim occurred and for other property for which the claimant normally provides fire protection. Such agreement must be primarily one of service rendered for service, or must be entered into under 42 U.S.C. 1856-1856d. Not included are all other agreements and contracts, particularly those in which the intent of the parties is that the United States pays for fire protection.

(i) "USFA" means the United States Fire Administration.

(j) "Over and above normal operating expenses" means costs, losses and expenses which are not ordinarily and necessarily associated with the maintenance, administration, and day-today operations of a fire service and which would not have been incurred absent the fire out of which the claim arises.

(k) "Payments to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question" means any Federal monies, or the value of services, including those made available through categorical or block grants, contracts, mutual aid agreements, taxes, and payments in lieu of taxes which the United States has paid to the fire service or its parent jurisdiction for fire protection and firefighting services. Such payments will be determined on the basis of the term of the arrangement, or if no such term is discernible, on the basis of the Federal fiscal year in which the fire occurred.

(l) "Property which is under the jurisdiction of the United States" means real property and Federal improvements thereon and appurtenances thereto in which the United States holds legal fee simple title. This excludes Federal leasehold interests. This likewise excludes Federal personal property on land in which the United States does not hold fee simple title.

(m) "State" means any State, of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Subpart B—Submission, Determination, Appeal

§ 151.11 Submission of claims.

Any fire service in any State which believes it has a claim(s) cognizable under section 11 shall submit its claim(s) in writing within 90 days of the occurrence of the fire(s) for which a claim(s) is made except that if the fire(s) occurred between October 29, 1974 and the effective date of these regulations, the claim(s) for those fires shall be submitted within 6 months of that effective date. If the fire is of such duration that the claimant desires to submit a claim before its conclusion, it may do so, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred. Claims shall be submitted to the Administrator, United States Fire Administration, Washington, D.C. 20472. Each claim shall include the following information:

(a) Name, address, jurisdiction and nature (volunteer, private, municipal, etc.) of claimant's fire service organization;

(b) Name, title, address and telephone number of individual authorized by the claimant fire service to make this claim in its behalf;

(c) Evidence that the person submitting the claim is authorized to do so on behalf of an eligible claimant;

(d) Name and telephone number of Federal employee familiar with the facts of the event and the name and address of the Federal agency having jurisdiction over the property on which the fire occurred;

(e) Location of fire (within building, land area or complex);

(f) Description of property burned (contents and/or structure, area, or natural resources);

(g) Proof of authority to fight the fire (source of alarm, whether fire service was requested by responsible Federal official or whether such an official accepted the assistance when offered) and time of alarm and proof that the costs were reasonable;

(h) Personnel and equipment committed to fighting of fire (type of equipment and number of items);

(i) Copy of fire report;

(j) Itemized list of direct expenses (e.g., hours of equipment operation, fuel costs, consumables, overtime pay and wages for any specially hired personnel) and direct losses (e.g., damaged or destroyed equipment, to include purchase cost, estimate of the cost of repairs, statement of depreciated value immediately preceding and subsequent to the damage or destruction and the extent of insurance coverage) actually incurred in fighting the fire. A statement should be included explaining why each such expense or loss is considered by the claimant not to be a normal operating cost, or to be in excess of normal operating costs;

(k) Most conclusive evidence claimant can reasonably supply of Federal ownership in fee simple of the property on which the fire occurred;

(l) A copy of any mutual aid agreement(s), or any contract for the provision of fire service, between the claimant and the United States or any of its agencies or instrumentalities:

(m) Such other information or documentation as the Administrator considers relevant to those considerations to be made in determining the amount authorized for payment, as set forth in § 151.12 of these regulations;

(n) Signed and sworn statement by authorized official of claimant fire service organization that the information and documentation provided in support of the claim are true and accurate to the best of his knowledge and belief; and

(o) Source and amount of any payments received or to be received for the fiscal year in which the fire occurred, including taxes or payments in lieu of taxes and including all monies received or receivable from the United States through any program or agreement including categorical or block grants, and contracts, by the claimant fire service or its parent jurisdiction for the support of fire services on the property on which the fire occurred. If this information is available when the claim is submitted, it should accompany the claim. If it is not, the information should be submitted as soon as practicable, but no later than 15 days after the end of the Federal fiscal year in which the fire occurred.

[42 FR 36954, July 18, 1977; 42 FR 37814, July 25, 1977. Redesignated at 44 FR 56172, Sept. 28, 1979]

§ 151.12 Determination of amount authorized for payment.

(a) The Administrator shall determine the amount to be paid on a claim (subject to payment by the Department of the Treasury). The amount to be paid is the total of eligible expenses, costs and losses under paragraph (a)(1) of this section which exceeds the amount of payments under paragraph (a)(2) of this section. The Administrator shall establish the reimbursable amount by determining:

(1) The extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire

which is the subject of the claim, i.e., the "amount of costs"; and

(2) What payments, if any, including taxes or payments in lieu of taxes, the fire service or its parent jurisdiction has received from the United States for the support of fire services on the property on which the fire occurred. The reimbursable amount is the amount, if any, by which the amount of costs, determined under paragraph (a)(1) of this section exceeds the amount of payments determined under paragraph (a)(2) of this section. Where more than one claim is filed the aggregate reimbursable amount is the amount by which the total amount of costs, determined under paragraph (a)(1) of this section exceed the amount of federal payments (in the case of a mutual aid agreement—its term or if none is determinable, the Federal Fiscal year) determined under paragraph (a)(2) of this section.

(b) The Administrator will first determine the costs as contemplated in paragraph (a)(1) of this section. He will then notify the claimant as to that amount. The claimant must indicate within 30 days its acceptance or rejection of that amount.

(1) If the determination is accepted by the claimant, this will be the final and conclusive determination of the amount of costs by the claimant in conjunction with the fire for which the claim is submitted.

(2) If the claimant rejects this amount, it must notify the Administrator, within 30 days, of its reasons for its rejection. Upon receipt of notification of rejection, the Administrator shall reconsider his determination and notify the claimant of the results of the reconsideration. The amount determined on reconsideration will constitute the costs to be used by the Administrator in determining the reimbursable amount.

(c) Upon receipt of documentation from the claimant on the amount of payments the Federal government has made for the support of fire services on the property in question, the Administrator will, following such verification or investigation as the Administrator may deem appropriate, calculate the full amount to be reimbursed under the Section 11 formula as set forth in § 151.12(a). This calculation of the reimbursable amount is based upon the costs determined pursuant to § 151.12(b) and the documentation of Federal payments that the claimant submitted.

(d) The Administrator's determination of the reimbursable amount will be sent to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination made under § 151.12 (a), (b) and (c), determine the amount authorized for payment, which shall be the amount actually available for payment from any monies in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred. This shall be a sum no greater, although it may be less, than the reimbursable amount determined by the Administrator, USFA, with respect to the claim under § 151.12 (a), (b) and (c).

(e) Upon receipt of written notification from the claimant of its intention to accept the amount authorized as full settlement of the claim, accompanied by a properly executed document of release, the Administrator will forward the claim, a copy of the Administrator's determination and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount authorized.

(f) Subject to the discovery of additional material evidence, the Administrator may reconsider any determination in this section, whether or not made as his final determination.

§ 151.13 Reconsideration of amount authorized for payment.

(a) If the claimant elects to protest the amount authorized for payment, after the applicable procedures of § 151.12 have been followed, it must within 30 days of receipt of notification of the amount authorized notify the Administrator in writing of its objections and set forth the reasons why the Administrator should reconsider his determination. The Administrator will upon notice of protest and receipt of additional evidence reconsider his determination of the amount of Federal payments under § 151.12(a)(2) but not his determination of the amount of costs under § 151.12(a)(1). He shall cause a reconsideration by the Secretary of the Treasury of the amount actually available and authorized for payment by the Treasury. The Administrator, upon receipt of the Secretary of the Treasury's reconsidered determination, will notify the claimant in writing of the amount authorized, upon reconsideration, for payment in full settlement of the claim.

(b) If the claimant elects to accept the amount authorized, upon reconsideration, for payment in full settlement of its claims, it must within 30 days (or a longer period of time acceptable to the Administrator) of its receipt of that determination notify the Administrator of its acceptance in writing accompanied by a properly executed document of release. Upon receipt of such notice and document of release, the Administrator will forward the claim, a copy of the Administrator's final determination, and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount of final authorization.

[42 FR 36954, July 18, 1977; 42 FR 37814, July 25, 1977. Redesignated at 44 FR 56172, Sept. 28, 1979]

§ 151.14 Adjudication.

If the claimant, after written notice by the Administrator of the amount authorized for payment in full settlement of the claim and after all applicable procedures of § 151.12 and § 151.13 have been followed elects to dispute the amount authorized, it may then initiate action in the Court of Claims of the United States, which shall have jurisdiction to adjudicate the claim and enter judgment in accordance with Section 11(d) of the Act.

Subpart C—Administration, Penalties

§ 151.21 Effective date.

This part becomes effective upon publication in the FEDERAL REGISTER. Claims must be for expenses, costs and losses to fire service organizations occurring after October 29, 1974, the date of enactment of Section 11 of the Act.

§ 151.22 Audits.

At the discretion of the Administrator, all claims submitted under Section 11 of the Act and all records of the claimant will be subject to audit by the Administrator or his designee. In addition, the Comptroller General of the United States or his designee shall have access to all books and records of all claimants making claims under Section 11.

§ 151.23 Penalties.

Claimant's officials or others who provide information or documentation under this Part are subject to, among other laws, the criminal penalties of Title 18 of the United States Code, Sections 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements and which provide for a fine of not more than $10,000 or imprisonment for not more than five years, or both. For such a violation, the person is likewise subject to the civil penalties of 31 U.S.C. 231. Section 231 provides that the person liable "shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by the reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

PARTS 152-199—[RESERVED]

SUBCHAPTER D—DISASTER ASSISTANCE

NOTE: Nomenclature changes to Subchapter D appear at 44 FR 56172, Sept. 28, 1979, 44 FR 62516, Oct. 31, 1979, and 46 FR 45138, Sept. 10, 1981.

PART 200—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 91-606)

Subpart A—General

Sec.

200.1 Purpose.
200.2 Definitions.
200.3 Policy.

Subpart B—Major Disasters

200.4 Requests for Federal assistance.
200.5 Processing the request of a Governor for a declaration of a "major disaster."
200.6 Initiation of Federal assistance.
200.7 Federal-State Disaster Assistance Agreements.
200.8 Project applications.
200.9 Debris and wreckage clearance.
200.10 Protective work.
200.11 Repair and replacement of facilities.
200.12 Emergency shelter.
200.13 Temporary housing.
200.14 Lease and mortgage payments.
200.15 Grants for removing timber from privately owned lands.
200.16 Assistance to unemployed individuals.
200.17 Federal assistance for projects under construction.
200.18 Emergency support teams.
200.19 Use of local firms and individuals.
200.20 Relief agencies.
200.21 Duplication of benefits.
200.22 Nondiscrimination.
200.23 Emergency communications.
200.24 Emergency public transportation.
200.25 Legal services.
200.26 State action.
200.27 Assistance by Federal agencies.
200.28 Surplus property.
200.29 The American National Red Cross.
200.30 Private relief organizations.
200.31 Minimum State and local expenditures.
200.32 Time limits.
200.33 Grants to local governments suffering loss of property tax revenue.
200.34 Retroactive provisions.

Subpart C—Disaster Planning

Sec.

200.35 Grants for developing, improving, maintaining, and updating State disaster plans.

Subpart D—Reduction of Threat of Major Disasters

200.36 Predisaster assistance.
200.37 Fire suppression.

Subpart E—Disaster Flood Insurance

200.38 Exclusions.
200.39 Applicability.

AUTHORITY: Sec. 7(d), 79 Stat. 670 (42 U.S.C. 3535(d)); Pub. L. 91-606, 84 Stat. 1744; E.O. 11749, Pub. L. 92-209, 85 Stat. 742, 38 FR 17175, June 27, 1973; Reorganization Plan No. 3 of 1978 (43 FR 41943); Executive Order 12127, dated March 31, 1979 (44 FR 19367); Executive Order 12148, dated July 20, 1979.

SOURCE: 39 FR 6697, Feb. 22, 1974, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

Subpart A—General

§ 200.1 Purpose.

The purpose of this part is to prescribe the standards and procedures to be followed in implementing those sections of Pub. L. 91-606 assigned to the Secretary by the Act or by Executive Order 11749, and delegated to the Associate Director at 38 FR 17869, July 5, 1973.

§ 200.2 Definitions.

As used in this part:

(a) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States, which in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of

States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the Governor of any State in which such catastrophe occurs or threatens to occur certifies the need for Federal disaster assistance under Pub. L. 91-606 and gives assurance of the expenditure of a reasonable amount of the funds of such State, its local governments, or other agencies for alleviating the damage, loss, hardship or suffering resulting from such catastrophe.

(b) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(d) "Governor" means the chief executive of any State.

(e) "Local government" means any county, city, village, town, district, or other political subdivision of any State, and includes any rural community or unincorporated town or village for which an application for assistance is made by a State or political subdivision thereof.

(f) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, except the American National Red Cross.

(g) "Associate Director" means the Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(h) "Public facility" includes any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, and any other public building, structure, or system, other than one used exclusively for recreation purposes.

(i) "Regional Director" means a director of a regional office of the Federal Emergency Management Agency.

(j) "Federal Coordinating Officer" is the person appointed by the Associate Director to operate under the Regional Director to coordinate Federal assistance in a major disaster.

(k) "State Coordinating Officer" is the person appointed by the Governor in the Federal-State Disaster Assistance Agreement as his authorized representative to act in cooperation with the Federal Coordinating Officer appointed under section 201 of the Act.

(l) "Contractor" is any individual, partnership, corporation, agency, or other entity, public or private (other than an organization engaged in the business of insurance) performing work for a State or local agency.

(m) "Damages" include suffering and hardship and physical destruction or deterioration.

(n) "Federal assistance" includes aid to disaster victims or State or local governments under provisions of the Act by Federal agencies.

(o) "Termination" as used in this part, means completion of eligible work to be accomplished and therefore the end of the need for Federal assistance.

(p) "Projects under construction" are those projects on which work has physically been initiated but not yet completed to the extent that the project has been accepted by the applicant.

(q) "Changed conditions" means changed physical conditions as differentiated from financial or administrative conditions.

(r) "Applicant" is the State or local government submitting a project application under the Act.

(s) "Medical care facility" includes, without limitation, any hospital, diagnostic or treatment center (outpatient facility), or rehabilitation facility as such terms are defined in section 645 of the Public Health Service Act, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operating of such medical care facilities although not contiguous thereto. As used throughout this regulation, the term "medical care facility" refers to a private, nonprofit facility, owned by a tax exempt organization.

(t) "Tax exempt organization" means an organization or entity which has applied for, and currently has in effect from the U.S. Internal Revenue Service, a ruling letter granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1954.

(u) "Disaster proofing" consists of those minimum alterations or modifications to damaged facilities which could be expected to prevent or substantially reduce future damages to the repaired or reconstructed facility; i.e., to make the facility disaster resistant. The cost of disaster proofing measures is limited to a small percentage of otherwise eligible costs.

(v) "Director" means the Director of the Federal Emergency Management Agency.

(w) The following definitions apply to the Flood Disaster Protection Act of 1973:

(1) "Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal financial assistance, other than general or special revenue sharing or formula grants made to States.

(2) "Financial assistance for acquisition or construction purposes" means any form of Federal financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein.

(3) "Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is fully enclosed and affixed to a permanent site.

(4) "Community" means a State or political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards. Unincorporated communities or private non-profit medical care facilities which may be otherwise eligible for Federal disaster assistance but do not fulfill the above definition must meet the flood insurance requirements of these regulations and must be sponsored by an applicant (community) which fulfills this definition in cases when the provision of the Flood Disaster Protection Act applies.

[39 FR 6697, Feb. 22, 1974, as amended at 39 FR 9651, Mar. 13, 1974. Redesignated at 44 FR 56172, Sept. 28, 1979, and amended at 46 FR 45138, Sept. 10, 1981]

§ 200.3 Policy.

(a) It is the policy of the Federal Emergency Management Agency to provide an orderly and continuing means of supplemental assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering, hardship and damage resulting from major disasters.

(b) It is also the policy of FEMA to foster the development of State and local government organizations and plans for coping with major disasters, and to provide advice and guidance to Federal agencies and States and local governments on organization and preparedness in order to meet the effects of major disasters.

(c) It is further a policy of FEMA to insure that the individual disaster victims are apprised of Federal assistance available and to assist the individual victim in obtaining the Federal assistance to which he is entitled.

(d) It is the policy of the FEMA that where the cost of restoration of facilities is recoverable in whole or in part from insurance or any other source, reimbursement will be limited to eligible costs as determined by the Regional Director after deducting any insurance settlement or other recovery. In the event insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement will be limited to eligible costs after deducting the maximum amount otherwise recoverable under and to the limit of the policy as determined by the Regional Director.

[39 FR 6697, Feb. 22, 1974, as amended at 39 FR 9651, Mar. 13, 1974. Redesignated at 44 FR 56172, Sept. 28, 1979]

Subpart B—Major Disasters

§ 200.4 Requests for Federal assistance.

(a) Upon the occurrence or threat of a catastrophe within a State which, in the opinion of its Governor constitutes, or threatens, a major disaster requiring supplementary Federal assistance, the Governor may present to the Associate Director, through the Regional Director, a request for Federal assistance. The request shall include the Governor's verification of the need for Federal assistance and his assurance of reasonable State and local government expenditures to prevent or alleviate damage from such disaster. In certain circumstances, the Governor may request a major disaster declaration for limited types of assistance. The request shall include the following:

(1) The Governor's certification as prescribed in § 200.31.

(2) An estimate of the amount and severity of damage broken down by type, such as private (nonagricultural), agricultural, and public.

(3) A statement of actions pending or taken by the State legislative or local legislative and governing authorities with regard to the disaster.

(4) An estimate of the extent and nature of Federal assistance needed by each county and the State broken down by category of public or individual assistance, including an estimate of the Federal funds necessary to supplement the efforts and available resources of the State in alleviating the damage.

(5) As appropriate, other justification in support of the request.

§ 200.5 Processing the request of a Governor for a declaration of a "major disaster".

(a) The Regional Director shall acknowledge and forward the Governor's request, together with his report and recommendations, to the Associate Director.

(b) The Associate Director shall forward the Governor's request, together with his report and recommendations to the Director.

(c) The Director shall forward the Governor's request to the President, together with his recommendation regarding Presidential action thereon.

§ 200.6 Initiation of Federal assistance.

Upon a declaration of a major disaster by the President, the Associate Director will immediately initiate action to provide Federal assistance in accordance with such declaration, applicable laws, and regulations. The determination of the President, with respect to the declaration of a major disaster, will be promptly transmitted to the Governor of the State concerned. Areas eligible for Federal assistance will be determined by the Associate Director. The Associate Director will appoint a Federal Coordinating Officer (FCO) to operate under the Regional Director in each major disaster. Such officer may be the Regional Director, a member of the regional staff or other Federal official. He shall be responsible for the coordination of Federal disaster relief and assistance. He shall establish and staff such field offices as may be necessary for the rapid and efficient administration of Federal disaster relief programs and shall otherwise assist local citizens and public officials in promptly obtaining assistance to which they are entitled. The FCO may also exercise any additional authorities as the Regional Director may prescribe.

§ 200.7 Federal-State Disaster Assistance Agreements.

(a) Upon the declaration of a major disaster, a Federal-State Disaster Assistance Agreement will be executed by the Governor (or the Acting Governor) acting for the State and the appropriate Regional Director, acting for the Federal Government. Such Agreement shall provide for the manner in which Federal assistance is to be made available and contain the assurance of the State that a reasonable amount of the funds of the State, local governments or other agencies therein will be expended in alleviating damage caused by the disaster. The Agreement will also contain such other terms and conditions consistent with the provisions of applicable laws, executive orders, and regulations, as the Associate Director may require.

(b) In the event a declaration is made only for limited assistance, the Agreement will so specify.

(c) In the event funds are to be transferred to a State for disaster relief purposes, every Federal-State

Disaster Assistance Agreement, by reference to this part, shall contain, and the State and its political subdivisions will agree to, the following provision:

In the event that a State or local government violates any of the conditions imposed upon disaster relief assistance under law, this Agreement or applicable Federal regulations, the Associate Director will notify the State of said violation and the necessary corrective measures, and will notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected: *Provided*, That if the Associate Director, after such notice to the State, is not satisfied with the corrective measures taken to comply with his notification, the Associate Director will notify the State that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has or is to be made available to the State or local governments for the purpose of disaster relief assistance under the provisions of this Agreement, applicable Federal regulations and the Act.

(d) By reference to this part, the following provisions shall be included in every Federal-State Disaster Assistance Agreement:

During the performance of any contract entered into under this agreement, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Equal Employment Opportunity Commission.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) Contractor noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, may result in action whereby the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedial measures invoked as provided in the said Executive order or by rule, regulation, or order of the U.S. Equal Employment Opportunity Commission or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the U.S. Equal Employment Opportunity Commission issued pursuant to section 303 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(e) By reference to this part, the following provision shall be included in every Federal-State Disaster Assistance Agreement entered into:

No member of or Delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit to arise thereupon: *Provided, however,* This provision shall not be construed to extend to any contract made with a corporation for its general benefit.

§ 200.8 Project applications.

(a) Federal financial assistance shall be provided on the basis of project applications submitted by the State or local governments and approved by the State and Regional Director or his authorized representative, pursuant to the Federal-State Disaster Assistance Agreement and in accordance with this part. The approved project application will provide the basis of a request for an advance of funds and reimbursement for expenditure.

(b) Project applications shall be submitted within 90 days, or a lesser period if so prescribed by the Regional Director, following the date of the President's declaration of a major disaster. If the circumstances of the disaster are such as to make immediate detailed damage surveys and reports by local/State/Federal agencies impractical, the Regional Director may, if the State so requests, extend this period.

(c) Every project application shall contain a certification by the Governor, or his authorized representative, that Federal financial assistance involved will be, or has been, expended in accordance with applicable law and regulations thereunder.

(d) If a project application is approved without change, signed copies thereof evidencing such approval shall be returned to the State.

(e) If disapproved, the project application shall be returned to the State with a statement of the reasons for such disapproval.

(f) If the approval is made subject to revisions, additional conditions, or partial disapproval, signed copies thereof evidencing such approval, together with a full explanation of the revisions or additional conditions, shall be returned to the State.

(g) If the project application is disapproved in whole or in part, by the Regional Director, because of inadequacy of information, the disapproved items may be resubmitted by the State within 30 days of the date of the return to the State: *Provided, however,* That if again disapproved by the Regional Director, or if there is no additional information, the disapproved items may be resubmitted, in writing, within 30 days of such disapproval through the Regional Director, with any further justification for consideration by the Associate Director. The same appeal procedures shall apply to the approval of vouchers for final payment.

(h) The local or State government, as an authorized applicant under the Act, must submit the project application on behalf of the interested private organization or entity for medical care facilities. In addition to the completed application documents specified by ODRR instructions, the following additional documents and assurances must be submitted with the application:

(1) A copy of the Internal Revenue Service ruling letter which grants the organization or entity tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954.

(2) When appropriate, the comments and recommendations of State or local government clearinghouses pursuant to the guidelines contained in OMB Circular No. A-95.

(3) A copy of the following assurances by the interested private organization or entity:

(i) In addition to owning the facility, that it has or will have a title in fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a reasonable period of time undisturbed use and possession for the purpose of the construction and operation of the facility. An assurance of such continued operation for a period of 50 years will fulfill this requirement. Any assurance for a lesser period of time must be submitted to the Associate Director for approval. Such approval will be granted only when such a lesser time period is found to be in the public interest.

(ii) That it will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of the project, and permit audit of such records and accounts at any reasonable times; and that claims for Federal reimbursement do not duplicate funding provided from any other source;

(iii) That it will provide and maintain competent and adequate architectural or engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; and

(iv) That adequate financial support will be available for maintenance and operation when completed.

§ 200.9 Debris and wreckage clearance.

(a) General: No authority under this section for debris clearance through the use of Federal agencies shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris, or wreckage from public and private property, and shall agree to indemnify the Federal Government against any claim arising from such removal. All emergency debris and wreckage clearance shall be performed immediately. Other debris clearance is to be completed as rapidly as possible.

(b) Emergency debris clearance is work necessary for preservation of life and property. Priority shall be given to restoring essential public services including reopening of roads and access to public facilities, and to removing immediate threats to life and property.

(c) Recovery work supplements the emergency work under paragraph (b) of this section. The Regional Director, whenever he determines it to be in the public interest, may:

(1) Through the use of Federal agencies, clear debris and wreckage from publicly and privately owned lands, waters, and drainage sources, and

(2) Make reimbursements to any State or local government for the removal of such debris or wreckage.

(d) Consideration in determining public interest under this section shall include:

(1) Whether removal of debris and wreckage is necessary to eliminate threats to life and property.

(2) Whether removal of debris and wreckage is necessary to eliminate a fire or flood hazard which threatens substantial destruction of undamaged public or private property.

(3) Whether removal of debris and wreckage is essential to the economic recovery of the affected community.

(e) No provision is made in the Act for reimbursing an individual or nongovernmental entity for the cost of removing debris from his own property. However, an individual may be reimbursed for the cost of debris removal from his property in those instances where applications were received by the Federal Government prior to January 1, 1971.

§ 200.10 Protective work.

Federal financial assistance may be provided for performing on public or private lands, protective and other emergency work necessary because of the disaster, for the protection of life and property.

§ 200.11 Repair and replacement of facilities.

(a) Repair or replacement of public facilities and medical care facilities may be eligible in two phases, as outlined in paragraphs (a) (1) and (2) of this section, dependent on the extent of damage and the circumstances under which repairs are to be made. Emergency repair or replacement under section 203 of the Act is authorized for medical care facilities.

(1) Emergency repair or replacement may be made only to the extent of providing a usable facility, where necessary, until a facility can be repaired or replaced to predisaster condition. The first phase will include only the minimum measures to make the facility temporarily operational. Examples are detours, rental of alternate facilities, and other similar measures. If circumstances are such that restoration of the facility can be delayed until permanent repair or replacement can be performed to predisaster conditions or if no alternative is practical, eligible work will be considered only under paragraph (a)(2) of this section.

(2) Permanent repair or replacement to predisaster condition, based on the

design of the facility as it existed immediately prior to the disaster, and in conformity with applicable codes, specifications, or standards, may be approved using the following criteria:

(i) The Federal contribution shall not exceed the net eligible cost of restoring each such facility;

(ii) Such net costs shall be based on the codes, specifications, and standards currently being used by the applicant for similar facilities in the locality. The general standards prescribed by the Public Health Service and set forth in the document "General Standards of Construction and Equipment for Hospital and Medical Facilities" shall be applicable for those medical care facilities that conformed to such general standards prior to the major disaster. For other medical care facilities, any eligible replacement of damaged facilities shall conform generally to such standards as determined by the Regional Director to be consistent with their predisaster condition and utilization;

(iii) Applicable codes, specifications, and standards are those minimum codes, specifications, and standards which relate directly to the health and safety of persons using the damaged facility and which were in general use and were enforced locally at the time of the disaster. If not in writing, the applicant must identify and a Federal inspector shall verify that the codes, specifications, and standards, to be applicable, were in use at the time of the disaster. If no codes, specifications, or standards, as prescribed above, have impact on eligible restorative work, repair, or replacement will be limited to returning the facility to predisaster condition, based on then-existing design. If compliance with applicable codes, specifications, and standards in effect at the time of the disaster clearly will not result in a safe and usable restored facility, the Associate Director, upon receipt of adequate justification, may authorize appropriate deviations;

(iv) If the damaged facility is economically repairable, as determined by the Regional Director, approved restorative work will be limited to the cost of eligible repairs;

(v) An applicant may, at its discretion, request a grant-in-lieu of authorized repair or replacement toward the repair or replacement of the facility to higher standards than provided for herein. Such grant-in-lieu shall not exceed the approved cost estimate of eligible work;

(vi) In every major Federal action or project involving Federal disaster assistance under the Act, the Regional Director shall determine whether or not the quality of human environment may be significantly affected thereby. In any case where affirmative determination may result, the Regional Director shall consult with the Associate Director or his staff to arrange for compliance with section 102, National Environmental Policy Act, Pub. L. 91-190; and

(vii) The minimum policy objective in restoring facilities damaged by a major disaster shall be to assure consideration of the advantages or disadvantages of disaster proofing or relocation before any work or Federal expense is authorized. In restoring damaged facilities by use of Federal disaster assistance, the Regional Director may authorize minimum disaster proofing as eligible work under the Act. When the Regional Director determines that a facility may not be economically restored and disaster proofed in a hazard area, he may authorize relocation to a less hazardous site: *Provided,* That overall Federal project cost is not increased. He may decline to authorize Federal disaster assistance to restore facilities at the original site when such facilities are subject to repetitive heavy damages or destruction.

(3) The repair or replacement of medical care facilities by Federal disaster assistance must be justified on the basis of need for such facilities as determined by the Regional Director based on recommendations by the State Coordinating Officer, State and/or local health agency, and the appropriate regional health agency of the Department of Health, Education, and Welfare. No payment will be made for any work which is not the responsibility of the interested private organization or entity. The following general

criteria apply for determining the eligibility of the medical care facility:

(i) It must have been in active use and providing significant medical services to the general public prior to the disaster;

(ii) It must have been recognized as an essential or integral part of the comprehensive plan for the provision of required medical facilities for the affected area or community;

(iii) It must be operated in a manner to carry out the tax exempt purposes of the owning organization; and

(iv) Damages must have occurred as the result of a major disaster and impair the capability of the medical care facility to perform essential medical services for the general public.

(b) For the purposes of this section, functional furnishings and equipment essential to the operation of the facility will be considered as part of a facility:

Provided, however, That used or surplus equipment shall be utilized to the extent practicable.

(c) Consumable supplies damaged or lost in a disaster will be considered eligible for replacement to the extent that such replacement is made within 90 days of the date of the President's declaration, but limited to a 30-day requirement of each item so replaced. The 90-day deadline may be waived by the Regional Director where appropriate.

(d) Federal reimbursement of costs actually incurred in replacing services, such as water and power, with services from other sources during the period of restoration of such facility may be based on the following criteria:

(1) Such services must be essential to the health and well-being of the community.

(2) Federal reimbursement shall not exceed the amount of such costs in excess of costs which would have been incurred in providing such services but for the major disaster.

(3) Such reimbursable services shall not exceed those services provided for a like period prior to the major disaster by the facility eligible for repair or replacement as a result of the major disaster.

(4) The applicant shall consider all alternate methods available for providing the interim services to select the most economical method. The applicant shall provide justification for such selection in submitting his project application for Federal assistance.

(5) As soon as possible the applicant shall submit a schedule for repair or replacement of the facility to the Governor's Authorized Representative with his project application for approval by the Regional Director. For all retroactive project applications, the applicant shall submit his project application and accompanying schedule on or before June 2, 1975.

(6) Payment shall be based on auditable cost records and clear documentation and justification of each element of cost, provided by the applicant.

(7) If excess costs have been paid by the customers of the services based on regular billing for these services, no reimbursement of such costs shall be made by the Federal government until the applicant has reimbursed such costs to the customers involved.

[39 FR 6697, Feb. 22, 1974, as amended at 40 FR 4652, Jan. 31, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979]

§ 200.12 Emergency shelter.

Emergency shelter such as mass shelter or other shelter during the emergency period during and immediately following the disaster may be furnished by the Red Cross or other private organization or by local, State, or Federal Government. If furnished by government agencies, and not reimbursable by such private organization, eligible costs may be paid.

§ 200.13 Temporary housing.

In providing assistance under this section for temporary housing for persons requiring such housing as a result of the disaster, the following criteria shall apply:

(a) Prior to provision of temporary housing a determination of the need for same will be made by the Regional Director based on a recommendation by the State Coordinating Officer, and after a survey of available facilities by private, local, State, and Federal agencies, as appropriate.

(b) Assistance for temporary housing with respect to a particular major disaster shall be limited to the minimum required to provide shelter within a reasonable commuting distance during such period of time, as determined by the Associate Director, as would be necessary to permit the construction or repair of permanent housing in the area, or relocation of displaced persons into other adequate housing.

(c) Temporary housing accommodations may be furnished by, but not limited to:

(1) Using any unoccupied and readily usable housing owned by the United States under any program of the Federal Government.

(2) Arranging with a local public housing agency for using unoccupied and readily usable public housing units, or

(3) Acquiring existing dwellings by lease.

(4) Acquiring mobile homes, or other readily fabricated dwellings by purchase or lease.

(5) Any mobile home or readily fabricated dwelling shall be placed on a developed site, complete with necessary improvements and utilities to the location of each such dwelling as provided without charge to the Federal Government by State or local government, or by the owner or occupant of a site who was displaced by the major disaster. In such cases, the Federal responsibility shall be limited to connection costs to the furnished utilities. Failure to provide such facilities on sites proposed for use by owners or occupants, shall constitute a basis for rejection of such sites. If the Regional Director determines it is in the public interest to use more economical and accessible sites, such sites, including utilities and improvements, may be provided at Federal expense.

(d) The occupant shall be responsible for paying directly all utility use charges, or shall be responsible for paying a monthly allowance for utilities used if he occupies a mobile home or prefabricated home located in a park or other dwelling for which utilities are not metered separately.

(e) No rentals shall be established for any temporary housing for the first 12 months of occupancy. Thereafter, rentals shall be as established by the Regional Director and shall be based on the fair market value of the accommodations being furnished, adjusted to take into consideration the financial ability of the occupant: *Provided, however,* That occupants of temporary housing may be evicted on 30 days notice for reasons including, but not limited to, the following:

(1) Alternate housing, determined to be adequate by the Federal Coordinating Officer or his representative is now available.

(2) The occupants' predisaster housing is now ready for occupancy.

(3) Failure to pay rent or utility charges.

(4) Failure to utilize and maintain the housing in a manner normally expected of tenants of rental housing.

(f) Temporary housing shall not be made available to any displaced individual or family with insurance coverage which provides the full cost of alternate living arrangements. An exception may be made if adequate housing for the individual or family is not available.

(g) Any mobile home or other dwelling provided under this part shall normally be the minimum size required to accommodate the individual or family occupant.

(h) Temporary housing (including but not limited to, mobile homes or other readily fabricated dwellings) acquired by purchase as a result of the major disaster may be sold directly to individuals and families occupying Federal furnished temporary disaster housing at prices that are fair and equitable.

(i) A disaster victim is expected to accept the first adequate housing offered. If, because of personal preference he refuses such housing, his case shall be referred to the State Coordinating Officer.

(j) Temporary housing shall not be made available to any person or family for use as a vacation or other secondary residence.

(k) Temporary housing will not be provided when mass shelter or typical transient accommodations are sufficient and when the nature or duration of the housing requirement does not justify more stable arrangements as determined by the Regional Director or his representative.

§ 200.14 Lease and mortgage payments.

The Associate Director or his designee shall provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure of any mortgage of lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Such assistance shall be provided for a period of not to exceed 1 year or for the duration of the period of financial hardship, whichever is the lesser.

§ 200.15 Grants for removing timber from privately owned lands.

Removal of timber damaged by a major disaster from privately owned lands may be eligible for Federal Assistance.

(a) An action plan shall be prepared by the State to tailor the cleanup and timber salvage operation to fit the specific situation, including at least the following:

(1) Priorities in the approval of work shall be established to guide efforts to areas where fire, pest, and wildlife hazards are concentrated.

(2) An appropriate limitation shall be placed on the degree of cleanup to be approved.

(3) Approved work practices and a scale of acceptable unit costs (per acre or otherwise) shall be established, if feasible.

(b) Inspection of the areas to be cleared shall be made by State and Federal representatives to provide a valid basis for approval of work to be done. In those cases where work has already been started or completed, the inspection is to determine a reasonable basis for approving or disapproving such work. Inspection reports shall include a complete description of the land to be cleared and of the eligible work and an estimate of the salvage value as well as the estimated cost of such work.

(c) Considerations in determining public interest under this section shall include threats to life and property, and possible flood hazards.

(d) Considerations in determining eligible costs under this section shall include:

(1) Claims for reimbursement shall be verified before payment on the basis of inspections and audits of completed work.

(2) Any applicable insurance recoveries and any salvage value of all timber removed or to be removed are to be considered and deducted from the costs for approved work. If the individual property owner elects to burn or otherwise dispose of the damaged timber instead of salvaging it, an estimated net value of potential salvage shall be established by the State and Federal representatives. If they cannot agree, the Regional Director shall make the determination, and his decision will be final.

(3) Costs for construction of temporary roads approved by the Regional Director, as necessary for access to or salvage of damaged timber are eligible.

§ 200.16 Assistance to unemployed individuals.

Based on delegation authority by the Director of the Office of Emergency Preparedness dated January 8, 1971, the Secretary of Labor will (a) under section 240 of the Act, provide assistance to individuals unemployed as a result of a major disaster, and (b) under section 226(b) of the Act, provide reemployment assistance services under other laws administered by the Department of Labor to individuals who are unemployed as a result of a major disaster and to issue such rules and regulations as may be necessary and appropriate. Such regulations are provided in 20 CFR Chapter V, Part 625 (34 FR 19656, Dec. 13, 1969), as amended.

§ 200.17 Federal assistance for projects under construction.

(a) Federal financial assistance may be provided for the repair, restoration, or reconstruction of any public facility or medical care facility which was damaged or destroyed as a result of a major disaster and for the additional costs resulting from a major disaster for completion of any such facility which was in the process of construction when damaged or destroyed as a result of such major disaster, based on the following criteria:

(1) Federal reimbursement shall not exceed 50 percent of the eligible costs. Eligible costs are defined to mean those costs incurred by the applicant or one of its contractors or, in the case of a medical care facility, by the interested private organization or entity or one of its contractors, and determined to be eligible by the Regional Director in:

(i) Restoring a facility to substantially the same condition as existed prior to the damage resulting from the major disaster, and

(ii) Completing construction not performed prior to the major disaster to the extent the increase of such costs over original construction costs is attributable to changed physical conditions resulting from the major disaster.

(b) Eligible costs shall not include any interest cost on project funding or any cost for which reimbursement is received pursuant to insurance contracts or otherwise by the party incurring the economic burden of such costs, including reimbursements which might be received from any other Federal agency.

(c) No reimbursement will be made to any applicant for damages caused by its own negligence, or by the negligence of any interested private organization or entity, or by any contractor.

§ 200.18 Emergency support teams.

The Associate Director or Regional Director is authorized to form emergency support teams of Federal personnel to be deployed in a major disaster area. Such emergency support teams shall assist the Federal Coordinating Officer in carrying out his responsibilities pursuant to section 201(b) of Pub. L. 91-606 or these regulations. Upon request of the Associate Director, the head of any Federal department or agency is authorized to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the discretion of the Associate Director, such personnel within the administrative jurisdiction of the head of the Federal department or agency as the Associate Director may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

§ 200.19 Use of local firms and individuals.

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities which may be carried out by contract with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms and individuals who reside or do business primarily in the affected political subdivisions in the disaster area. The Regional Director shall monitor such Federal expenditures to assure compliance.

§ 200.20 Relief agencies.

(a) In providing relief and assistance following a major disaster, the Associate Director or Regional Director may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Menonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the Associate Director or Regional Director finds that such utilization is necessary.

(b) The Associate Director is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal Coordinating Officer whenever such organizations are engaged in providing relief during and after a major disaster. Any such agreement shall include provisions conditioning use of the facilities of the Office of Disaster Response and Recovery and the services of the Federal Coordinating Officer upon compliance with regulations promulgated by the Associate Director under sections 208 and 209 of the Act, and such other regulations as the Associate Director may require.

§ 200.21 Duplication of benefits.

(a) The Associate Director, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster, shall assure that no such person, business concern, or other entity will receive such Federal financial assistance with respect to any part of such loss as to which he has received financial assistance under any other program.

(b) The Associate Director shall assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster if such person, concern, or entity received compensation from insurance or any other source for that part of such a loss. Partial compensation for a loss or a part of a loss suffered as the result of a major disaster shall not preclude additional Federal assistance for any part of such a loss not compensated otherwise.

(c) Whenever the Associate Director determines (1) that a person, business concern, or other entity has received assistance under this Act for a loss and that such person, business concern or other entity received assistance for the same loss from another source, and (2) that the amount received from all sources exceeded the amount of the loss, he shall direct such person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which he deems excessive.

§ 200.22 Nondiscrimination.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with OEP Regulation 5, 32A CFR Part 93.

(b) The Associate Director shall issue, and may alter and amend, such additional regulations as may be necessary for the guidance of personnel carrying out emergency relief functions at the site of a major disaster. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, religion, sex, color, age, economic status, or national origin.

(c) As a condition of participation in the distribution of assistance or supplies under section 207, relief organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the Associate Director, and such other regulations applicable to activities within a major disaster area as he deems necessary for the effective coordination of relief efforts.

(d) As a condition of receiving assistance under section 255, interested private organizations or entities restoring damaged medical care facilities shall be required to comply with this part and agree in writing that no person shall, on the grounds of race, religion, sex, color, age, economic status or national origin, be subjected to discrimination under the subsequent operation of these medical care facilities.

§ 200.23 Emergency communications.

The Associate Director is authorized during, or in anticipation of, an emergency to establish temporary communications in any major disaster area in order to carry out the functions of his office, and to make such communications available to State and local government officials and other persons as he deems appropriate.

§ 200.24 Emergency public transportation.

The Associate Director or Regional Director may provide emergency public transportation service in a major disaster area to meet the emergency needs of communities. Such service shall be devised to meet the needs of persons who, because of the disaster, have lost ready access to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible. Any transportation provided under this section is intended to supplement but not replace normally available transportation facilities and is to be discontinued as rapidly as possible as ready access to the above facilities becomes available.

§ 200.25 Legal services.

Whenever the Associate Director determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by Pub. L. 91-606 or these regulations, the Associate Director shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and States and local bar associations.

§ 200.26 State action.

(a) The Governor of the State shall designate a State Coordinating Officer who shall review all project applications. In addition, the Governor (or his designee) shall certify that the project applications meet all the requirements and conditions of the Agreement and such other terms established by the Associate Director and shall recommend approval or disapproval.

(b) Federal funds shall be controlled in accordance with accepted or prescribed methods of accounting, identification and administrative responsibilities. Representatives of the Federal Emergency Management Agency and the General Accounting Office shall have access during normal business hours to the books and records of the State, local governments, contractors, and other agencies relating to Federal financial assistance. Such records shall be maintained for a period of 3 years after payment.

(c) Procurement of work and services under project applications hereunder must comply with § 200.7 and with State or local statutes, regulations and ordinances covering procurement of such supplies and services by such State or the political subdivision thereof.

(d) No contract entered into by an applicant for disaster work or services under Pub. L. 91-606 or these regulations shall contain a provision which makes the payment for such work contingent upon reimbursement under Pub. L. 91-606 or these regulations.

§ 200.27 Assistance by Federal agencies.

(a) Upon the declaration of a major disaster, the Associate Director or Regional Director may direct any Federal agency to provide assistance to State and local governments, with or without reimbursement to the Federal agency as prescribed in Pub. L. 91-606 or these regulations and as deemed appropriate by the Associate Director or Regional Director under the provisions of Federal reimbursement regulations, Part 201 of this chapter.

(b) The Regional Director is authorized to coordinate all activities of Federal agencies in providing disaster assistance.

(c) The Regional Director is authorized to request that other Federal agencies shall provide any reports or information relating to disaster assistance deemed necessary.

(d) Assistance to be furnished by any Federal agency under paragraph (a) of this section shall be subject to the criteria of eligibility provided for under this part and such other instructions as may be issued from time to time by the Associate Director.

(e) Assistance under paragraph (a) of this section, when directed by the Associate Director or Regional Director, shall not affect the authority of any Federal agency to provide disaster relief assistance independent of the Act: *Provided,* Such disaster relief assistance by other Federal agencies is subject to the coordination of the Regional Director/Federal Coordinating Officer.

(f) In carrying out disaster relief assistance under Pub. L. 91-606 and this part, any Federal agency is authorized to accept and utilize, with the consent of the State or local government, the services, personnel, materials and facilities of such State or local agency in connection with the disaster: *Provided, however,* Such utilization shall not be considered to make such services, materials, or facilities, Federal in nature or to make the State, local governments, or agencies thereof an arm or agent of the Federal Government.

§ 200.28 Surplus property.

(a) The States shall make maximum utilization of available Federal surplus property.

(b) The Federal Government will donate equipment and supplies determined in accordance with applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government, to States for use by them for the purposes of Pub. L. 91-606 or these regulations. The donation of such surplus property shall be made to the States upon the basis of a certification by the State that such property is usable and necessary for disaster relief purposes, and will be made in accordance with the procedures prescribed by the General Services Administration.

(c) The States may obtain information on the availability of surplus property from the State surplus property agency; or the State agency designated for such purposes under State law.

§ 200.29 The American National Red Cross.

The disaster relief capabilities of the American National Red Cross shall be utilized to the maximum extent in accordance with the Memorandum of Understanding between the Office of Disaster Response and Recovery and the American National Red Cross. Nothing contained herein shall be construed to limit or in any way effect the responsibilities of the American National Red Cross as stated in Pub. L. 58-4 approved January 5, 1905 (33 Stat. 599).

§ 200.30 Private relief organizations.

The disaster relief capabilities of private organizations shall be utilized as provided in Federal agreements of such organizations with the Federal Emergency Management Agency or as authorized by the Regional Director.

§ 200.31 Minimum State and local expenditures.

(a) Federal disaster assistance under the Act in any State will be available only after the Governor of that State certifies that the total of State and local expenditures and obligations (or resources utilized) by the government of each State, local government thereof, or other agencies (over and above their normal expenditures) for disaster relief purposes exceeds an amount published by the Associate Director as the minimum for that State in that disaster and for all disasters during the 12-month period immediately preceding the request for assistance.

(b) The Associate Director, in unusual circumstances, or in disasters in which exceptional destruction and/or suffering and hardship have occurred, may waive in whole or in part this requirement.

(c) The certification by the Governor of total State and local expenditures and obligations shall contain the following provisions:

Pursuant to § 200.31, Federal Disaster Assistance Regulations, I certify that the total of expenditures and obligations (or resources utilized) by the State of ————————, for disaster relief purposes for all disasters during the 12-month period immediately preceding this request, and for which no Federal reimbursement has been or will be received, exceeds $————————.

Disaster relief expenditures for this disaster for which no Federal reimbursement will be requested are expected to exceed $———————— in accordance with the following table:

[In dollars]

Category of assistance	Amount	
	State	Local
Individual assistance:		
Temporary housing		
Health		
Welfare		
Other (specify)		
Total		
Public assistance:		
Debris and wreckage clearance		
Protective work		
Restoration of public facilities		
Public safety		

[In dollars]

Category of assistance	Amount	
	State	Local
Other (specify)		
Total		
Grand total		

§ 200.32 Time limits.

(a) Federal assistance provided under the act shall begin with the President's declaration of a major disaster and, with the following exceptions, shall terminate upon expiration of these prescribed time periods:

	Start	Complete
(1) Emergency debris clearance.		3 months.[2]
(2) Other emergency measures	3 months	6 months.
(3) Relief and rehabilitation	6 months	1 year.
(4) Long-term permanent projects.	6 months	18 months.[1]

[1] The Regional Director, on basis of approved construction schedule, shall establish the completion deadline within this period.

[2] The Regional Director, may approve debris clearance projects for completion in six months only for cleaning debris catch basins or for demolition of disaster-damaged buildings or structures.

(b) Exceptions: Based on extenuating circumstances or unusual project requirements clearly beyond the control of the applicant and the direct recipient of the Federal assistance, the Regional Director may extend any of time periods (1), (2), or (3), not to exceed 3 months, and he may extend time period (4) not to exceed 6 months per project, on a project-by-project basis.

(c) Failure to start a project within the specified time limits may result in cancellation of the project unless the late start is approved by the Regional Director. The Regional Director may impose lesser time limits for work completion under paragraphs (a) (1), (2), (3), and (4) of this section if considered appropriate. Similarly, based on his determination that such action is warranted, the Associate Director, or the Assistant Associate Director for disaster programs, may extend a completion date beyond a maximum time limit previously extended by the Regional Director.

[39 FR 6697, Feb. 22, 1974, as amended at 39 FR 9651, Mar. 13, 1974. Redesignated at 44 FR 56172, Sept. 28, 1979]

§ 200.33 Grants to local governments suffering loss of property tax revenue.

(a) To obtain Federal assistance under section 241 of the Act, an applicant shall submit a project application through normal channels not later than 30 days after filing and certifying the annual tax roll covering the disaster period. The Associate Director or Regional Director may accept a late application for processing when properly justified by the applicant.

(b) A Federal financial contribution may be authorized only for the tax year in which the disaster occurred and for each of the following 2 tax years. Grants will be approved on an annual basis for each of the 3 tax-year periods provided that the applications for the second and third years will reflect the current certified tax rolls.

(c) The Federal financial contribution authorized for any tax year shall not exceed the difference between the annual average of all property tax revenues received by the local government during the 3 tax-year periods immediately preceding the tax year in which the major disaster occurred and the actual property tax revenue received by the local government for the tax year in which the disaster occurred and for each of the 2 tax years following the major disaster: *Provided*, That: If there has been a reduction in the tax rates or the tax assessment valuation then for the purpose of determining the amount of a grant under this part for the year or years when such reduction is in effect, the tax rates and tax assessment valuation factors of the local government in effect at the time of the disaster without reduction shall be used, in order to determine the property tax revenues which would have been received by the local government but for such reduction.

(d) Advances may be made on the basis of the estimated loss of revenue and payment of such advances may be made as of the date that tax revenues are due and payable.

(e) Each year to be considered will be treated as a separate project and the annual final payment for each year will be adjusted based on the actual loss experienced at the close of such tax year. As a part of the Project Applications, applicants will be required to submit to the State a certification of the annual revenues received by the applicant during the 3 tax-year periods immediately preceding the tax year in which the disaster occurred.

§ 200.34 Retroactive provisions.

Sections 226(b), 237, 241, 252(a), and 254 of Pub. L. 91-606 take effect as of August 1, 1969, and sections 231, 232, and 233 take effect as of April 1, 1970.

Subpart C—Disaster Planning

§ 200.35 Grants for developing, improving, maintaining, and updating State disaster plans.

(a) A Federal contribution up to a maximum of $250,000 for any one State, and not to exceed 50 percent of the cost of developing a plan and program, may be provided on the basis of the following:

(1) A State desiring assistance under this section shall designate or create an agency which is qualified to plan, and administer or coordinate a program to combat and mitigate the effects of major disasters, and for relief and assistance to individuals, businesses, and local governments, suffering losses as a result of a major disaster.

(2) The Governor shall then submit a letter of application for assistance under this part to the Regional Director. Such application shall include the following:

(i) Estimated total cost.

(ii) Contribution requested from the Federal Government.

(iii) Work schedule or timetable.

(iv) Proposed staffing, including qualification standards for planning staff and work that will be contracted.

(v) Name of the State agency responsible under paragraph (a)(1) of this section.

(3) Within 1 year following the date the Regional Director approves the application, the State agency shall submit a plan which will:

(i) Set forth a comprehensive and detailed State program for preparation against, and relief following, a major disaster including provisions for emergency and long-term assistance to individuals, business, and local governments suffering losses as a result of a major disaster showing the role of State and local governments in the coordination and execution of the program, including maintenance of effective liaison and cooperation with appropriate charitable organizations which provide food, shelter, and other disaster relief, and

(ii) Make provision for the appointment of a State Coordinating Officer to act in cooperation with the Federal Coordinating Officer required by section 201 of Pub. L. 91-606.

(b) A Federal contribution up to a maximum of $25,000 per annum for any one State in an amount not to exceed 50 percent of the cost for the purpose of improving, maintaining, and updating that State's disaster assistance plan, may be provided on the basis of an application similar to that required in paragraph (a) of this section.

(c) To be eligible for improving, maintaining, and updating under paragraph (a)(2) of this section a State disaster assistance plan must:

(1) Have been developed in accordance with the provisions of the Disaster Act of 1969 or 1970; or

(2) Be determined by the Associate Director as sufficiently comprehensive and adequate to justify improving, maintaining and updating.

Subpart D—Reduction of Threat of Major Disasters

§ 200.36 Predisaster assistance.

Upon the request of a Governor, through the Regional Director, the Associate Director may direct the use of Federal departments, agencies, instrumentalities, and other resources of the Federal Government, to assist a State or any local government thereof and to use their available resources to avert or lessen the effects of a disaster which threatens to become a major disaster. The Governor's request shall specify the location and extent of the area that will be affected; the conditions existing which clearly indicate the imminent occurrence of a major disaster and the assistance required from the Federal Government. Normally such assistance will consist of mobilizing personnel, equipment and supplies at the scene of an imminent disaster and of providing advice and guidance to State and local authorities. This authority shall not be used in substitution for existing authorities of any other Federal agency or for the authority contained in section 205 of Pub. L. 91-606.

§ 200.37 Fire suppression.

Upon the request of a Governor or his authorized representative, if one is named in the Federal-State Agreement, through the Regional Director, Associate Director may provide funds to assist a State in the suppression of any fire on publicly or privately owned forest or grass lands which threatens such destruction as to constitute a major disaster. The Governor's request shall specify the location of the fire, the conditions existing which make the threat imminent, and the assistance required from the Federal Government.

Subpart E—Disaster Flood Insurance

§ 200.38 Exclusions.

(a) The following categories of Federal disaster assistance authorized under the Disaster Relief Act of 1970, as amended, are excluded from the provisions of the Flood Disaster Protection Act of 1973:

(1) Federal financial assistance for emergency work essential for the protection and preservation of life and property eligible for Federal reimbursement under the Disaster Relief Act of 1970 or any subsequent Act of Congress which supersedes or modifies that Act. This exemption includes eligible emergency work under §§ 200.9, 200.10, 200.11(a)(1), 200.12, 200.13, 200.15, 200.23, and 200.24.

(2) Federal financial assistance for permanent work under §§ 200.11(a)(2) and 200.17 on any State-owned property that is covered by an adequate State policy of self-insurance approved by the Federal Insurance Administrator.

(3) Federal financial assistance under §§ 200.33 (Community Disaster Grants), 200.35 (Grants for Developing, Improving, Maintaining, and Updating State Disaster Plans), 200.36 (Pre-disaster Assistance), and 200.37 (Fire Suppression).

[39 FR 9651, Mar. 13, 1974. Redesignated at 44 FR 56172, Sept. 28, 1979]

§ 200.39 Applicability.

(a) Federal financial assistance for permanent work on buildings in an area identified by the Federal Insurance Administrator as having special flood hazards unless exempted above, is subject to the full restrictions and limitations imposed by the Flood Disaster Protection Act of 1973 for all project applications approved for such buildings in accordance with the following:

(1) Effective March 2, 1974, if the Federal Insurance Administrator has identified the areas having special flood hazards in a community in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, any building and contents not covered by the required flood insurance is not eligible for Federal financial assistance.

(2) For all project applications approved after June 30, 1975, if the Federal Insurance Administrator has identified an area within a flood-prone community as an area having special flood hazards and the community is not participating in the flood insurance program under the National Flood Insurance Act of 1973, restorative work as the result of disaster damage to buildings in a special flood hazard area is ineligible for Federal financial assistance.

(3) In the case of paragraphs (a) (1), or (2) of this section, any building may become eligible for Federal financial assistance, if the community concerned within six months after the date of the Federal Damage Survey Report qualifies for and enters the flood insurance program; obtains and maintains the necessary flood insurance policy for the required period, as determined by FEMA Regional Director; and provides FEMA with written evidence thereof, except that in those cases involving appeals to the Federal Insurance Administrator, the Regional

Director may authorize an extension of time to the applicant for the purpose of meeting this flood insurance requirement. Flood insurance is required in connection with obtaining Federal disaster assistance grants for permanent restorative work within an identified flood-hazard area, even if a flood had not occasioned the major disaster declaration. If the applicant replaces a building outside of the special flood hazard area, Federal financial assistance for eligible permanent restorative work will not be denied, even if the community is not participating in the flood insurance program.

(b) Where permanent repair, replacement, or relocation is involved, flood-proofing not required by locally applicable codes, specifications, and standards shall be accomplished at the owner's expense. In any instance where compliance with such locally applicable codes, specifications and standards may significantly increase the eligible Federal restorative costs, the Regional Director may determine that such Federal assistance shall be based on relocation.

(c) FEMA Regional Director or the Federal Coordinating Officer will work closely with the State Coordinating Officer, State and local governments and the Regional Office of the Federal Insurance Administration to ensure that the provisions of this part for special flood hazard areas are considered in the processing and approval of project applications under § 200.8. In addition, the FEMA Regional Director or the Federal Coordinating Officer will require compliance with the provisions in this part in issuing mission assignments for direct Federal assistance under §§ 200.6 and 200.27 whenever property subject to the provisions of the Flood Disaster Protection Act of 1973 is involved.

(d) For any State-owned building not covered by an approved State policy of self-insurance, the FEMA Regional Director shall require proof of adequate flood insurance covering proposed permanent restorative work eligible for reimbursement under the Disaster Relief Act of 1970, as amended.

(e) When an eligible applicant for permanent restorative work to buildings damaged by a disaster provides proof of flood insurance to obtain Federal funding, he makes a commitment to continue the flood insurance for the life of the eligible restorative work, as determined by FEMA Regional Director. For those buildings on which the owner is delinquent on flood insurance commitments, the Regional Director shall suspend any future Federal assistance to the eligible applicant (owner) until such delinquency is eliminated.

(f) When a State has been approved by the Federal Insurance Administrator as a self-insurer, the FEMA Regional Director shall determine the amount of self-insurance applicable to any building damaged by a major disaster and shall deduct such self-insurance coverage from the Federal grant for permanent restorative work.

(g) In administering this section. Regional Directors will utilize current information obtained from the Federal Insurance Administration to identify States having a satisfactory program of self-insurance, communities eligible for flood insurance under the regular or emergency programs, flood hazard area boundaries, and flood risk zones.

[39 FR 9651, Mar. 13, 1974. Redesignated at 44 FR 56172, Sept. 28, 1979]

PART 201—REIMBURSEMENT OF OTHER FEDERAL AGENCIES UNDER PUBLIC LAW 91-606

Sec.
201.1 Purpose.
201.2 Eligibility of certain expenditures for reimbursement.
201.3 Expenditures not eligible for reimbursement.
201.4 Procedures in obtaining or authorizing the services or resources of other Federal agencies.
201.5 Procedures for requesting reimbursement.

AUTHORITY: Sec. 7(d), 79 Stat. 670; (42 U.S.C. 3535(d)); Pub. L. 91-606, 84 Stat. 1744; Pub. L. 92-209, 85 Stat. 742; E.O. 11749; Reorganization Plan No. 3 of 1978 (43 FR 41943); Executive Order 12127, dated March 31, 1979 (44 FR 19367); Executive Order 12148, dated July 20, 1979.

SOURCE: 39 FR 6705, Feb. 22, 1974, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

§ 201.1 Purpose.

The regulations in this part prescribe the policies and procedures governing the reimbursement, under Pub. L. 91-606, 91st Congress, of any Federal agency, for any of its authorized expenditures determined to be eligible for reimbursement.

§ 201.2 Eligibility of certain expenditures for reimbursement.

Reimbursement to other Federal agencies for expenditures in providing disaster assistance, at the direction or request of the Federal Emergency Management Agency Associate Director or Regional Director, may be approved by the FEMA Associate Director for the following:

(a) Overtime, travel, and per diem of regular Federal agency civilian personnel diverted from their normal duties. In addition, regular salary, including employee benefits, may be approved only for employees detailed directly to and under the supervision of FEMA.

(b) Wages, travel, and per diem of temporary Federal personnel assigned to disaster work (in the major disaster area designated by the Associate Director).

(c) Travel and per diem for Federal military personnel assigned to disaster work (in the major disaster area designated by the Associate Director).

(d) Work, services, and materials contracted for by other Federal agencies for assistance performed on a specific disaster project.

(e) Materials, equipment, and supplies (including transportation, repair, and maintenance) from regular inventory stocks utilized or consumed.

(f) Work performed at the specific direction of the Associate Director when a major disaster is imminent: *Provided,* That such work would be otherwise eligible upon declaration of a major disaster: *And provided further,* That such costs shall not include funds expended or supplies and materials including medical stockpiles delegated under E.O. 10958, August 14, 1961, used by Federal agencies performing disaster work under their own authority where funds therefor may be otherwise available or may be made available.

(g) Work performed at the request of the Associate Director or Regional Director to investigate potential disaster situations: *Provided,* That work would be otherwise eligible if a major disaster were declared.

(h) Other direct costs that can be specifically identified with a directive or request from the Associate Director or Regional Director.

(i) Such other costs or expenditures not otherwise provided herein, as the Associate Director may approve, based upon the written justification submitted to the Associate Director by the agency concerned, or as agreed to in writing between the Associate Director and other Federal agencies.

§ 201.3 Expenditures not eligible for reimbursement.

(a) Administrative overhead costs.

(b) Costs incurred while performing work under a Federal agency's own authority.

§ 201.4 Procedures in obtaining or authorizing the services or resources of other Federal agencies.

(a) The Associate Director, in determining the nature and extent of Federal assistance to be rendered to a State in alleviating the damages resulting from a major disaster, will take into consideration the type of assistance available from other Federal agencies. He, or the Regional Director, will direct or request other Federal agencies to provide such available assistance as he may determine necessary.

(b) All such directives or requests authorizing the performance of work and the expenditure of funds shall be in writing, or, if oral, shall be confirmed in writing, and contain a clause regarding funding.

§ 201.5 Procedures for requesting reimbursement.

(a) Requests for reimbursement of authorized expenditures should normally be submitted quarterly; except, however, final accounting for expenditures should be submitted within 90 days after completion of work for each specific disaster. Billings totaling less than $1,000 are not to be submitted more often than quarterly.

(b) Requests for reimbursement shall be in sufficient detail to identify and segregate: (1) Personal services, (2) travel, and (3) all other expenses. Supporting documentation shall include a breakdown of eligible personal services, list of contracts and an explanation of other costs. The reimbursement request shall cite the specific directive or request for assistance, issued by the Associate Director or Regional Director, under which costs were incurred, the State and location in which the work was performed, and the disaster identification number.

(c) All requests for reimbursement shall be submitted to the Regional Director of the Region for which costs were incurred.

PART 205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

Subpart A—General

Sec.
205.1 Purpose.
205.2 Definitions.
205.3 Policy.
205.4 State emergency plans.
205.5 Assistance by Federal agencies.
205.6 Federal equipment and supplies.
205.7 Use and coordination of relief organizations.
205.8—205.9 [Reserved]
205.10 Duplication of benefits.
205.11 Nonliability of the Federal Government.
205.12 Criminal and civil penalties.
205.13 Reviews and reports.
205.14 Appeals.
205.15 Effective date.
205.16 Nondiscrimination in disaster assistance.
205.17 Coordinating Officers.
205.18 Emergency support teams.

Subpart B—Emergencies

205.23 General.
205.24 Requests for emergency assistance.
205.25 Processing of State requests.
205.26 Initiation Federal assistance.
205.27 Federal-State agreements.
205.28 Emergency mass care.
205.33 Time limitations. [Reserved]

Subpart C—[Reserved]

Subpart D—Major Disasters

Sec.
205.39 General.
205.40 Definitions.
205.41 Requests for major disaster assistance.
205.42 Processing a request of a Governor for a declaration of a "major disaster".
205.43 Initiation of Federal assistance.
205.44 Federal-State agreement.
205.45 Temporary housing assistance.
205.46 Disaster legal services.
205.47 Disaster unemployment assistance.
205.48 Individual and family grants programs.
205.49 Food commodities.
205.50 Relocation assistance.
205.51 Crisis counseling assistance and training.

Subpart E—Public Assistance

205.70 General.
205.71 Definitions.
205.72 Applicant eligibility.
205.73 General work eligibility.
205.74 Emergency work.
205.75 Permanent work.
205.76 Eligibility of costs.

Subpart F—Community Disaster Loans.

205.90 Purpose.
205.91 Loan program.
205.92 Responsibilities.
205.93 Eligibility criteria.
205.94 Loan application.
205.95 Loan administration.
205.96 Loan cancellation.
205.97 Loan repayment.

Subpart G—Fire Suppression Assistance

205.100 General.
205.101 Federal-State agreements.
205.102 Request for assistance.
205.103 Providing assistance.
205.104 Reimbursement.

Subpart H—Project Administration

205.110 General.
205.111 Definitions.
205.112 Implementation of OMB Circular A-102 (Rev.).
205.113 Federal grant assistance.
205.114 Project applications.
205.115 Documentation.
205.116 Project performance.
205.117 Final inspections.
205.118 Claims for reimbursement.
205.119 Federal funding.
205.120 Appeals.

Sec.
205.121 Direct Federal assistance.
205.122 Availability of materials.

Subpart I—Reimbursement of Other Federal Agencies

205.150 Purpose.
205.151 Assistance from other Federal agencies.
205.152 Expenditures eligible for reimbursement.
205.153 Procedures for reimbursement.

Subpart J—General Insurance Requirements

205.200 General.
205.201 Definitions.
205.202 Exclusions.
205.203 Applicability.
205.204 Type of insurance.
205.205 Extent of insurance.
205.206 Duration of insurance coverage.
205.207 Assurances for categorical grants.
205.208 Assurances for flexible funding.
205.209 Self-insurance.

Subpart K—Flood Insurance Requirements

205.250 General.
205.251 Definitions.
205.252 Exclusions.
205.253 Applicability.

Subpart L—[Reserved]

Subpart M—Hazard Mitigation

205.400 General.
205.401 Definitions.
205.402 Implementing actions.
205.403 Responsibilities.
205.404 Surveys.
205.405 Hazard mitigation plans.
205.406 Hazard mitigation measures.
205.407 Land use regulations.
205.408 Construction practices.
205.409 Consultations.
205.410 Compliance.
205.411 Evaluation.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (79 Stat. 670, 42 U.S.C. 3535(d)); Reorganization Plan No. 3 of 1978 (43 FR 41943); Executive Order 12127, dated March 31, 1979 (44 FR 19367); Executive Order 12148, dated July 20, 1979, unless otherwise noted.

SOURCE: 40 FR 23253, May 28, 1975, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

Subpart A—General/

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 163 (42 USC 5201); Executive Order 12148; and Delegation of Authority, 44 FR 44792.

SOURCE: 45 FR 53335, Aug. 11, 1980, unless otherwise noted

§ 205.1 Purpose.

The purpose of this part is to prescribe the standards and procedures to be followed in implementing those sections of Pub. L. 93-288 assigned to the Director, Federal Emergency Management Agency (FEMA) by Executive Order 12148 and delegated to the Associate Director, FEMA.

§ 205.2 Definitions.

(a) General. The following definitions have general applicability throughout this part:

(1) "The Act" means the Disaster Relief Act of 1974 Pub. L. 93-288, as amended: 42 USC 5121 *et seq.*

(2) "Applicant" (a) for public assistance (Subpart E) means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action, and (b) for individual assistance (Subpart D) means an individual or family who submits an application or request for assistance under the Act.

(3) "Associate Director" means the Associate Director for State and Local Programs and Support, FEMA, or his/her designated representative.

(4) "Contractor" means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(5) "Designated area" means any emergency or disaster-affected portion of a State which the Associate Director has determined is eligible for Federal assistance.

(6) "Director" means the Director, FEMA.

(7) "Disaster Recovery Manager" means the person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(8) "Emergency" means any hurricane, tornado, storm, flood, high water, winddrive water, tidal wave, tsunami, earthquake, volcanic erup-

tion, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a major disaster. For the purpose of these regulations, an emergency exists when the President so determines.

(9) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(11) "Governor" means the chief executive of any State or the Acting Governor.

(12) "Governor's Authorized Representative" means the person named by the Governor in the Federal-State Agreement to execute on behalf of the State all necessary documents for disaster assistance and evaluate and to transmit local government, eligible private non-private facility, and State agency requests for assistance to the Regional Director following a major disaster or emergency declaration.

(13) "Local government" means (i) any county, city, village, town, district, or other political subdivision of any State; any Indian tribe or authorized tribal organization; or Alaska Native village or organization, and (ii) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by State or political subdivision thereof.

(14) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(15) "Private nonprofit organization" means any nongovernmental agency or entity that currently has (i) an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under Section 501 (c), (d), or (e) of the Internal Revenue Code of 1954 or (ii) satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(16) "Public facility" means any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes, or any park.

(17) "Regional Director" means a director of a regional office of the Federal Emergency Management Agency (FEMA), of his/her designated representative. As used in these regulations Regional Director also means the Disaster Recovery Manager who has been appointed to exercise the authority of Regional Director for a particular emergency or major disaster.

(18) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(19) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the Federal Coordinating Officer.

(20) "State emergency plan" as used in Section 301(b) of the Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(21) "Temporary housing" means emergency or temporary accommodations provided by the Federal Government to individuals or families made homeless by an emergency or a major disaster (see § 205.52).

(22) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(23) "Voluntary organization" means any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with a disaster.

(b) Definitions which apply to individual subparts are found in those subparts.

[45 FR 53335, Aug. 11, 1980, as amended at 46 FR 45138, Sept. 10, 1981]

§ 205.3 Policy.

(a) It is the policy of the Federal Emergency Management Agency (FEMA) to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(1) Providing Federal assistance for public and private losses and needs sustained from disasters;

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance;

(5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

(b) It is also the policy of FEMA to foster the development of State and local government organizations and plans for coping with disasters, and to provide advice and guidance to Federal agencies and States and local governments on organization and preparedness to meet the effects of disasters.

(c) It is further a policy of FEMA to ensure that the individual disaster victims are informed of available Federal assistance and to assist individual victims in obtaining the Federal assistance to which they are entitled. Through coordination of all Federal programs and procedures, FEMA shall facilitate, wherever possible, the victims' understanding of these programs and simplify any actions required on the part of those victims who apply for assistance.

§ 205.4 State emergency plans.

The State shall set forth in the State's emergency plan all responsibilities and actions specified in the Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to disasters and to facilitate the delivery of Federal disaster assistance.

§ 205.5 Assistance by Federal agencies.

(a) Upon the declaration of a major disaster or an emergency by the President, the Associate Director or the Regional Director may direct any Federal agency to provide assistance to State and local governments by:

(1) Utilizing or lending their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any act;

(2) Distributing medicine, food, and other consumable supplies; and

(3) Rendering assistance under the authority of the Act. Such assistance is provided with or without compensation as considered appropriate by the Associate Director or Regional Director under the provisions of "Subpart I—Reimbursement of Other Federal Agencies" of these regulations.

(b) Federal agencies shall provide any reports or information about disaster assistance rendered under provisions of these regulations, that the

FCO or Regional Director considers necessary and requests from the agencies.

(c) Assistance furnished by any Federal agency under paragraph (a) of this section is subject to the eligibility criteria provided by the Associate Director under these regulations and other instructions as the Associate Director or Regional Director may issue.

(d) Assistance under paragraph (a) of this section, when directed by the Associate Director or the Regional Director, shall not affect the authority of any Federal agency to provide disaster assistance independent of the Act. However, disaster assistance by other Federal agencies is subject to the coordination of the Federal Coordinating Officer.

(e) In carrying out the purposes of the Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(f) Eligible work under the provisions of the Act is not performed by or under the direct supervision of a Federal agency except when the State or local government lacks the capability to perform or contract for the approved work or the Regional Director determines that direct assistance is necessary to meet an immediate threat to life, health, or safety. (See § 205.121, Direct Federal Assistance.)

§ 205.6 Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

(c) In providing assistance under the Act, the Federal Government shall use surplus Federal property to the fullest extent feasible.

§ 205.7 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Act, the Associate Director or the Federal Coordinating Officer may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the Associate Director or the Federal Coordinating Officer finds that such utilization is necessary.

(b) In any major disaster or emergency, the Regional Director may provide assistance by distributing or rendering through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations medicine, food, and other consumable supplies or emergency services.

(c) The Associate Director may enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations under which the Federal Coordinating Officer may coordinate the disaster relief activities of such organizations whenever the organizations are engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with 205.16 (non-discrimination) and 205.10 (Duplication of Benefits) of these regulations and such other regulations as the Associate Director may issue.

(d) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Pub. L. 58-4, approved January 5, 1905 (33 Stat. 599).

§ 205.8—205.9 [Reserved]

§ 205.10 Duplication of benefits.

(a) The Associate Director, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster or emergency, shall establish policies to assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster or emergency, if such person, business concern, or other entity received compensation from insurance or any other source for that part of the loss. Partial compensation for a loss or a part of a loss suffered as the result of a major disaster or emergency shall not preclude additional Federal assistance for any part of the loss not compensated otherwise.

(c) The Regional Director and the Federal Coordinating Officer shall assure that no Federal assistance is provided under the Act for any part of a loss for which the applicant has been compensated from another source, as imposed by the duplication of benefits policies established by the Associate Director.

(d) Whenever the Associate Director, Regional Director or Federal Coordinating Officer determines (1) that a person, business concern, or other entity has received assistance both under this Act and from another source for the same loss and (2) that the amount received from all sources exceeded the amount of the loss, the Associate Director, Regional Director or Federal Coordinating Officer shall direct the person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which exceeds the loss.

§ 205.11 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

§ 205.12 Criminal and civil penalties.

(a) Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under the Act shall be fined not more than $10,000 or imprisoned for not more than one year or both for each violation.

(b) Any individual who knowingly violates any order or regulation under the Act shall be subject to a civil penalty of not more than $5,000 for each violation.

(c) Whoever knowingly missapplies the proceeds of a loan or other cash benefit obtained under any section of the Act shall be subject to a fine in an amount equal to one and one-half the times the original principal amount of the loan or cash benefit.

§ 205.13 Reviews and reports.

(a) The Associate Director shall review the activities of Federal agencies and State and local governments providing disaster assistance, in order to assure maximum coordination and effectiveness of such programs, and shall report to Congress from time to time on these activities.

(b) In carrying out this provision, the Associate Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of State and local governments. Additionally, the Associate Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 205.14 Appeals.

Any appeal is a request for reconsideration of a determination on any action related to Federal assistance under the Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

§ 205.15 Effective date.

(a) These regulations are effective and supersede existing regulations as of September 10, 1980.

(b) Any action taken in accordance with previous regulations remains valid.

§ 205.16 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with Regulation 44 CFR Part 7.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, religion, sex, color, age, economic status, or national origin.

(c) As a condition of participation in the distribution of assistance or supplies under the Act or of receiving assistance under the Act, government bodies, and other organizations shall provide a written assurance of their intent to comply with regulations relating to non-discrimination promulgated by the President or the Associate Director and shall comply with such other regulations applicable to activities within an area affected by major disaster or emergency as the Associate Director deems necessary for the effective coordination of relief efforts. The provisions to be included in every Federal-State Agreement shall be the provisions provided by Executive Order 11246 as amended by Executive Orders 11375, 11478 and 12086.

§ 205.17 Coordinating Officers.

(a) Upon the declaration of a major disaster or an emergency the Associate Director will appoint a Federal Coordinating Officer (FCO) who shall:

(1) Make an immediate appraisal of the types of relief aid most urgently needed;

(2) Establish such field offices as he deems necessary;

(3) Coordinate the administration of relief activities of other Federal agencies as well as those of the American National Red Cross, the Salvation Army, the Menonite Disaster Service, and other voluntary relief organizations which agree to operate under his advice or direction;

(4) Coordinate the administration of relief with State and local government officials;

(5) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles, under their own legislative authorities and operational policies.

(6) Take such other action, consistent with authority delegated to him by the Regional Director and with the provisions of the Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The Governor shall be requested to appoint a State Coordinating Officer (SCO) in emergencies and major disasters for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government. The SCO will be the principal point of contact for the FCO regarding coordination of State and local disaster relief activities , implementation of the State Emergency Plan, and State compliance with the Federal-State Agreement. The functions, responsibilities, and authorities of the SCO should be set forth in the State Emergency Plan.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 45 FR 53335, Aug. 11, 1980; 45 FR 64585, Sept. 30, 1980]

§ 205.18 Emergency support teams.

The Associate Director or Regional Director shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal Coordinating Officer in carrying out his responsibilities pursuant to the Act and these regulations. Upon request of the Associate Director, the head of any Federal department or agency is authorized to detail to temporary duty with the emergency support teams, on either a reimbursable or non-reimbursable basis as is determined necessary by the Associate Director, such personnel within the administrative jurisdiction of the head of the Federal department or agency as the Associate Director may need or believe to be useful for carrying out the functions of the emergency support teams. Each such detail shall be without loss of seniority, pay, or other employee status.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 45 FR 53335, Aug. 11, 1980; 45 FR 64585, Sept. 30, 1980]

Subpart B—Emergencies

§ 205.23 General.

Upon the occurrence of a catastrophe within the State which the Governor finds (a) is of such severity and magnitude that effective response is beyond the capability of the State and the affected local governments, and (b) requires emergency assistance to save lives and protect property, health and safety or to avert or lessen the threat of a disaster, which, because of the pressures of time or because of the unique capabilities of a Federal agency, can be more readily provided by the Federal Government; the Governor may present to the President, through the Regional Director, a request for Federal assistance which includes the above findings. Based on such Governor's request, the President may determine that an emergency exists which warrants Federal assistance and may provide such assistance under the Act as he deems appropriate.

§ 205.24 Requests for emergency assistance.

(a) The request for emergency assistance shall be made by the Governor of the affected State to the President, through the Regional Director.

(b) The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency including that for which no Federal funding will be requested, and will define the particular type and specific extent of Federal aid required.

§ 205.25 Processing of State requests.

(a) The Regional Director shall acknowledge the Governor's request. Based on his investigation of the situation, which may include field assessments and consultations with appropriate State and Federal officials or other interested parties, the Regional Director shall promptly submit his report and recommendations to the Associate Director.

(b) The Associate Director shall forward the Governor's request, together with his report and recommendations, to the Director.

(c) The Director shall forward the Governor's request to the President, together with his recommendation regarding Presidential action thereon.

§ 205.26 Initiation of Federal assistance.

Upon a determination by the President that an emergency exists which warrants Federal assistance, the Associate Director shall immediately initiate action to provide Federal assistance under such determination and in accordance with applicable laws, and regulations and the Federal-State Agreement for Emergencies. The Regional Director may approve or undertake emergency work only as authorized under the determination by the President.

§ 205.27 Federal-State agreements.

(a) A Federal-State Agreement for Emergencies (Agreement) shall be executed by the Governor, acting for the State, and the Regional Director, acting for the Federal Government. The Agreement will contain the necessary terms and conditions consistent with the provisions of applicable laws, executive orders, and regulations, as the Associate Director may require and will set forth the type and extent of Federal assistance. The emergency area in which assistance is authorized shall be determined by the Associate Director based on the State's request.

(b) It is intended that continuing agreements shall be executed between each State and the Federal Government as soon as possible. Where continuing agreements have been executed, an amendment to such agreement shall be executed by the Governor and the Regional Director for each emergency to specify the incidence period and to include any specifics peculiar to the current emergency. Subsequent amendments to such agreements for the same emergency may be executed by the Governor's Authorized Representative and the Regional Director. A new continuing agreement will be executed if there is a change in Governors or Regional Directors.

(c) The type and extent of Federal assistance set forth in the Agreement, or supplement thereto, shall be the only assistance which is eligible for Federal reimbursement or funding under the Act.

(d) In the event funds are to be transferred to a State for disaster relief purposes, the Agreement, by reference to this section shall contain, and the State and its political subdivisions will agree to, the following provisions:

> In the event that a State or local government violates any of the conditions imposed upon disaster relief assistance under law, this Agreement or applicable Federal regulations, the Associate Director will notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected: *Provided, however,* That if the Associate Director, after such notice to the State, is not satisfied with the corrective measures taken to comply with his notification, the Associate Director will notify the State that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has or is to be made available to the State or local governments for the purpose of disaster relief assistance under the provisions of this Agreement, applicable Federal regulations, and the Act.

(e) By reference to this part, the following provision shall be included in the Agreement:

> No Member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon: *Provided, however,* That this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

(f) When assistance is authorized for a local government and a State is unable to assume the responsibilities prescribed in these Regulations and an Indian tribe or authorized tribal organization or Alaska Native village or organization submits a project application in accordance with § 205.7(a), Federal disaster assistance will be administered in accordance with a Federal-Tribal agreement. Such Federal-Tribal agreement will provide that the Indian tribe or authorized tribal organization or Alaska Native village or organization will perform the regulatory or coordinating functions to be performed by a State or its political subdivisions as set forth in this section.

§ 205.28 Emergency mass care.

Emergency mass care, such as emergency medical care, emergency shelter, emergency provision of food, water and medicine, and other essential needs, are normally provided by the Red Cross or other voluntary organizations and Federal emergency assistance will be approved by the Regional Director only upon an affirmative showing that such organizations are not providing all or part of emergency mass care essential needs.

§ 205.33 Time limitations. [Reserved]

Subpart C—[Reserved]

Subpart D—Major Disasters

§ 205.39 General.

Upon the occurrence of a catastrophe within a State which the Governor finds is of such severity and magnitude that effective response is beyond the capability of the State and the affected local governments and that Federal assistance is necessary to supplement the efforts and available resources of the State, local governments and disaster relief, organizations, the Governor may present to the President, through the Regional Director a request for Federal assistance which includes the above findings. Based on such Governor's request, the President may declare that a major disaster exists. Federal assistance pursuant to such declaration may include emergency assistance pursuant to Subpart B of this part. Where the situation is not of sufficient severity and magnitude to warrant major disaster assistance under the Act, or where information upon which to base such a declaration is insufficient or not readily available, the President may determine that an emergency exists which warrants Federal assistance.

§ 205.40 Definitions.

As used in this part:

(a) "Field Assessment" means those preliminary estimates and descriptions, based on actual observations by government engineers or inspectors, of the nature and extent of damages, resulting from a disaster, and of the Federal assistance potentially eligible under the Act.

(b) "Disaster-affected areas" means any local government, as defined in § 205.2 or part thereof, designated by the Associate Director, upon request by the State, as being eligible for Federal assistance under the Act.

(c) "Applicable standards of safety, decency, and sanitation" are those minimum guidelines prescribed or approved by the Associate Director for any repair or reconstruction financed by Federal grants or loans under the Act.

§ 205.41 Requests for major disaster assistance.

(a) The request for a major disaster declaration shall be made by the Governor of the affected State to the President, through the Regional Director.

(b) As a part of such request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan, and shall advise the Associate Director thereof. In addition, the request shall include the following:

(1) An estimate of the amount and severity of damage broken down by type, such as private non-agricultural, agricultural, and public.

(2) A statement of actions pending or taken by the State or local legislative and governing authorities with regard to the disaster.

(3) A certification that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster. The certification by the Governor shall include the following:

> Pursuant to Federal Disaster Assistance Administration Regulations, I certify that the total of expenditures and obligations for this disaster for which no Federal reimbursement will be requested are expected to exceed $———— in accordance with the following table:

[In dollars]

Category of assistance	Amount[1]	
	State	Local
Individual assistance:		
Housing		
Individual and family grants		
Mass care		
Other (specify)		
Total		
Public assistance:		
Debris and wreckage clearance		
Protective work		
Restoration of public facilities		
Public safety		
Other (specify)		
Total		
Grand total		

[1] Provide separately for each disaster affected area requested.

(4) An estimate of the extent and nature of Federal assistance needed within the State, broken down by category of public or individual assistance for each disaster affected area for which Federal assistance is requested and the estimated Federal funds required for each category.

(5) As appropriate, other justification in support of the request.

§ 205.42 Processing the request of a Governor for a declaration of a "major disaster".

(a) The Regional Director shall acknowledge the Governor's request. Based on his investigation of the situation, which may include field assessments of the affected area and consultations with appropriate State and Federal officials, or other interested parties, the Regional Director shall promptly submit his report and recommendations to the Associate Director.

(b) The Associate Director shall forward the Governor's request, together with his report and recommendations, to the Director.

(c) The Director shall forward the Governor's request to the President, together with his recommendation regarding Presidential action thereon.

§ 205.43 Initiation of Federal assistance.

Upon a declaration of a major disaster by the President, the Associate Director shall immediately initiate action to provide Federal assistance in accordance with such declaration, applicable laws, regulations, and the Federal-State Agreement for Major Disasters. Disaster affected areas within the State will be determined by the Associate Director based on the State's request. A disaster affected area designated by the Associate Director includes all local governments within its boundaries.

§ 205.44 Federal-State agreement.

(a) Upon the declaration of a major disaster, a Federal-State Agreement for Major Disasters (Agreement) will be executed by the Governor, acting for the State; and the Regional Director, acting for the Federal Government. Such Agreement shall provide for the manner in which Federal assistance is to be made available and contain the assurance of the Governor that a reasonable amount of the funds of the State, local governments, or other agencies therein will be expended in alleviating damage caused by the disaster. The Agreement will also contain such other terms and conditions consistent with the provisions of applicable laws, executive orders, and regulations as the Associate Director may require.

(b) The Agreement will specify the assistance to be provided as a result of major disaster.

(c) In the event funds are to be transferred to a State for disaster relief purposes, the Agreement, by reference to this section shall contain, and the State and its political subdivisions will agree to, the following provisions:

> In the event that a State or local government violates any of the conditions imposed upon disaster relief assistance under law, this Agreement or applicable Federal regulations, the Associate Director will notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected: *Provided, however,* That if the Associate Director, after such notice to the State, is not satisfied with the corrective measures taken to comply with his notification, the Associate Director will notify the State that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has or is to be made available to the State or local governments for the purpose of disaster relief assistance under the provisions of this Agreement, applicable Federal regulations, and the Act.

(d) By reference to this part, the following provision shall be included in the Agreement:

> No Member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit to arise thereupon: *Provided, however,* That this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

(e) When assistance is authorized for a local government and a State is unable to assume the responsibilities prescribed in these Regulations and an Indian tribe or authorized tribal organization or Alaska Native village or organization submits a project application in accordance with § 205.7(a), Federal disaster assistance will be administered in accordance with a Federal-Tribal agreement. Such Federal-Tribal agreement will provide that the Indian tribe or authorized tribal organization or Alaska Native village or organization will perform the regulatory or coordinating functions to be performed by a State or its political subdivisions as set forth in this section.

§ 205.45 Temporary housing assistance.

(a) *Purpose.* The purpose of this section is to prescribe the policy, standards, and procedures to be followed in implementing the temporary housing assistance program authorized by Section 404 of the Act.

(b) *General program policies.* Assistance under this program is made available to eligible individuals and families who require temporary housing as a result of a major disaster. The commencement date and the term of temporary housing assistance is that set forth in paragraph (k)(1) of this section. No rental shall be established for the first twelve months of occupancy in temporary housing. An eligible applicant is expected to accept the first reasonable offer of temporary housing; refusal to do so may result in forfeiture of temporary housing assistance. Temporary housing will not be provided to an individual or family for use as a vacation or recreational dwelling. Temporary housing will not be made available to individuals or families who are displaced as a consequence of a redevelopment program undertaken by a community.

(c) *Application period.* Applications for temporary housing will be accepted up to and including sixty (60) days following the date of the declaration of a major disaster, except when additional time for submission of applications is authorized by the Associate Director or his/her designee for reasons including:

(1) Uniformity of application periods in contiguous States declared disaster areas as the result of the same or a similar incident;

(2) Extenuating circumstances including, but not limited to, hospitalization, illness, or inaccessibility which prevent an applicant from applying in a timely manner.

(d) *General eligibility guidelines.* (1) Temporary housing assistance may be made available to those disaster victims who, as a result of a major disaster, require temporary housing because:

(i) Their dwelling has been destroyed as a result of a major disaster;

(ii) Their dwelling has been damaged or utility service has been interrupted to such an extent as to constitute a health or safety hazard which did not exist prior to the disaster;

(iii) Their dwelling has been made inaccessible due to the disruption or destruction of transportation routes or facilities, or due to other impediments to access;

(iv) Their dwelling has been made inaccessible by restrictions on travel or movement imposed or recommended by a responsible official;

(v) Their dwelling is no longer available due to eviction or dispossession of the applicant by the owner because of the owner's personal need for that dwelling as a result of a major disaster;

(vi) They have been evicted from their dwelling by the owner or mortgage holder because of their financial hardship which is a direct result of the disaster; or

(vii) The Associate Director or his/her designee determines that other circumstances resulting from a major disaster prevent an individual or family from occupying a dwelling which they occupied immediately prior to the major disaster.

(2) *Provision of temporary housing to eligible applicants.* Applications for temporary housing assistance shall be processed in the order in which they are filed, except that extreme hardship situations shall be recognized and such applications processed on a priority basis. Temporary housing shall be provided to meet the particular needs of eligible individuals and families.

(e) *Temporary housing resources.* The form of temporary housing provided should not exceed that which meets the eligible individual's or family's minimum temporary housing requirement.

(1) Housing units owned by the Veterans Administration, Farmers Home Administration, Department of Housing and Urban Development, or other Federal Agencies may be made available for use as temporary housing.

(2) Private or commercial rental properties whose owners/managers agree to make units available may be used as temporary housing. Such private rentals may include second homes or resort properties not normally available on the private market, and privately owned mobile homes ready for occupancy on existing sites. Owners/agents may be paid fair market rent for the type and size of the units made available.

(3) Mobile homes, travel trailers, or other readily fabricated dwellings owned or leased by the Government may be used as temporary housing when other resources are unavailable or insufficient.

(4) Motel, hotel or other similar transient accommodations may be provided to eligible temporary housing applicants pending the availability of other temporary housing, or when the duration of the applicant's temporary housing requirement warrants placement in short-term accommodations. Transient accommodations may be provided for a period of thirty days unless this period is extended by the Associate Director or his/her designee. The Federal responsibility for transient accommodations shall be limited to the rental cost of such temporary housing, exclusive of food, telephone, or other similar services.

(f) *Use of mobile homes, travel trailers, and other readily fabricated dwellings.* Mobile homes, travel trailers, and other readily fabricated dwellings may be placed on private, group or commercial sites under the following conditions:

(1) *Private sites.* A mobile home, travel trailer, or other readily fabricated dwelling may be placed on a private site, which is a site provided or obtained by the temporary housing applicant at no cost to the Federal Government, if such site can satisfactorily accommodate the mobile home, travel trailer, or other readily fabricated dwelling provided as temporary housing. The Associate Director has determined that the installation or repair of essential utilities on private sites is in the public interest, and the cost of such installation and connection of necessary utilities to service the mobile home, travel trailer, or readily fabricated dwelling on such a site is authorized at Federal expense.

(2) *Group sites.* Mobile homes, travel trailers, or other readily fabricated dwellings may be located on group sites, which are sites provided or obtained by a State or local government or other organization completely developed with all essential utilities at no cost to the Federal Government, except that the Associate Director may authorize installation of essential utilities at Federal expense or elect to develop group sites at Federal expense when he/she determines such action to be in the public interest. Connection costs are authorized at Federal expense.

(3) *Commercial sites.* A Mobile homes, travel trailers, or other readily fabricated dwellings may be placed on commercial sites, which are sites customarily leased for a fee, at no cost to the Federal Government, except that such sites may be leased at Federal expense when the Associate Director or his/her designee determines that such lease is in the public interest. Connection costs may be authorized at Federal expense. When the Associate Director determines that upgrading of a commercial site or installation of utilities on such a site is in the public interest, he/she may authorize such action at Federal expense.

(g) *Utility use costs.* Utility use costs for all forms of temporary housing other than transient accommodations shall be the responsibility of the occupant, unless the Associate Director waives this requirement when such action is in the public interest. In those cases where the Federal Government becomes the guarantor for utility services not metered separately, or where the utility costs are included in rental costs, each recipient will be assessed a monthly amount equivalent to the pro rata cost of utilities services.

(h) *Minimal repair program.* In lieu of providing other types of temporary housing except transient accommodations, minimal repairs may be authorized to repair or restore that portion of an owner-occupied dwelling which will allow the owner and his/her family to reoccupy the dwelling quickly. Installation of utilities or conveniences not available to the owner-occupant in that dwelling prior to the disaster shall not be provided under the Minimal Repair Program, but those repairs which are undertaken shall conform to local or State building codes.

(1) *Feasibility.* The Minimal Repair Program may be offered to those temporary housing applicants:

(i) Who have been determined eligible for temporary housing;

(ii) Who are owner/occupants of the dwelling unit to be repaired;

(iii) Who elect this form of temporary housing, when offered, in lieu of other alternatives which may include rental accommodations, mobile homes, and other available forms of housing;

(iv) Whose property can be repaired within thirty days following the repair authorization, unless the Associate Director or his/her designee extends this period throughout the designated disaster area because of local conditions;

(v) Who agree to reimburse the government for the cost of the repairs of items replaced if they receive compensation for such repairs or items from the proceeds of any insurance settlement; and

(vi) Whose property can be repaired within the following cost limitation: The cost of repairs shall not exceed the average fair market rental cost to house a family of similar size and composition in the area for a period of 12 months, unless waived by the Associate Director when he/she determines that such waiver is in the best interest of the Federal Government.

(2) *Minimal repair program options.* (i) Applicants subsequently approved for the Minimal Repair Program under paragraph (h)(1) of this section who elected to perform their own repairs prior to election of the Minimal Repair Program, either by themselves or by contract, may be reimbursed for materials and contract labor for such repairs and for replacement items authorized in paragraph (h)(3) of this section.

(ii) Applicants approved for the Minimal Repair Program under paragraph (h)(1) of this section who elect to perform their own repairs, or are able to utilize the free labor of individual volunteers or volunteer agencies, may be provided with materials and replacement items authorized in paragraph (h)(3) of this section.

(3) *Scope of work.* The type of repair or replacement authorized may vary depending on the nature of the disaster, but will generally include the following: *Provided,* The items listed were a part of the dwelling prior to the disaster, unless the Associate Director waives this proviso when he/she determines that such waiver is in the best interest of the Federal Government:

(i) Plumbing system including kitchen sink, lavatory, water closet, bath tub or shower, septic tank, well, and the utility services carrying water, sewer, and gas;

(ii) Electrical system including wiring, weather head, panel box, overhead lights, switches, and receptacles; and

(iii) Heating system including furnance, controls, space heater, ducts, and venting (if permanent repair cannot be accomplished before the season requiring heat);

(iv) Water heater and venting;

(v) Elimination of health and safety hazards existing to wells, floors, stairs, porches, walls, ceilings, and chimneys;

(vi) Doors and windows, including screens;

(vii) Minor repairs to foundations, footings, piers, sills, and exterior walls;

(viii) Minor repairs to stove and refrigerator;

(ix) Temporary or weather proofing repairs to roofs; and

(x) Mud and debris removal from the dwelling unit, if required.

(i) *Furniture Items*—(1) *Eligibility.* Furniture may be provided to eligible applicants for temporary housing if the individual or family is being placed in an unfurnished housing unit, or has located a suitable unfurnished housing unit, or has elected the Minimal Repair Program, and requires furniture to occupy such temporary housing.

(2) *Items Authorized.* Furniture may be leased, purchased or obtained from Federal stocks and will be of simple construction and functional quality and may include the following, adjusted according to family size and composition:

(i) Kitchen furniture to include table and chairs, stove and refrigerator;

(ii) Bedroom furniture to include bed (frame, mattress, spring), night table and lamp or floor lamp, dresser or chest; and

(iii) Living room furniture, including one sofa, one floor lamp, one living room chair, two end tables, and one coffee table.

(3) *Disposition of Furniture Items.* (i) Furniture made available to temporary housing occupants will be disposed of when temporary housing is no longer required, as determined through the recertification process prescribed in paragraph (k)(2) of this section.

(ii) Furniture will be disposed of in one of the following manners:

(A) Return to the lessor;

(B) If the furniture has been purchased under authority of these regulations, it is the property of the Federal Government and may be:

(*1*) Sold to the occupant at a fair and equitable price based on the fair market value of the furniture and adjusted to take into consideration the reasonable ability of the purchaser to pay; or

(*2*) Disposed of in accordance with Federal property management procedures at 41 CFR 101-45.5, Abandonment or Destruction of Surplus Property.

(j) *Household items*—(1) *Eligibility.* Household items may be provided to those determined eligible for temporary housing if they are being placed in a temporary housing unit not already supplied with such items, or have located a suitable housing unit and require household items to occupy the unit, or have elected the Minimal Repair Program, and require household items to occupy the unit. Household items provided under this section are expendable.

(2) *Items Authorized.* Household items provided to occupants of temporary housing shall be of simple, functional qualify and may include the following, adjusted according to family size and requirements:

(i) Sheets (2 per bed);

(ii) Pillows (1 per person);

(iii) Pillowcases (1 per person);

(iv) Blankets (1 per bed);

(v) Bath towels (2 per person);

(vi) Hand towels (2 per person);

(vii) Wash cloths (1 per person);

(viii) Dish Cloths (2 per family);

(ix) Dish towels (4 per family);

(x) Dishes (service for 4);

(xi) Flatware (service for 4);

(xii) Glasses (service for 4);

(xiii) Non-electric coffee pot (1 per family);

(xiv) Saucepans (2 per family);

(xv) Skillets (1 large, 1 small per family);

(xvi) Baking and cooking utensils, one each of the following:

(A) Baking pan;

(B) Baking sheet;

(C) Mechanical can opener;

(D) Kitchen fork;

(E) Kitchen knife;

(F) Paring knife;

(G) Spatula;

(H) Serving spoon;

(xvii) Mop (one);

(xviii) Bucket (one);

(xix) Broom (one); and

(xx) Dustpan (one).

(k) *Period of Assistance*—(1) *Commencement.* Temporary housing may be provided as of the date of the occurrence of the major disaster or emergency as specified in the FR Notice. The assistance period shall commence either with the date the eligible applicant obtained his own temporary housing under this program, or with the date the eligible applicant is provided with temporary housing.

(2) *Recertification.* Recertification is a periodic review of the status of each temporary housing occupant to determine eligibility for continued occupancy in temporary housing. The recertification process results in a notification to the occupant of his/her eligibility or ineligibility for continued assistance. The period of eligibility for continued occupancy in temporary housing shall be determined on the basis of need. Each occupant's eligibility for continued assistance shall be recertified no less frequently than every 90 days.

(3) *Criteria for Continued Eligibility.* A temporary housing occupant shall endeavor to place himself/herself in alternate housing at the earliest possible time. A temporary housing occupant shall be eligible for continued assistance when:

(i) Alternate housing is not available to the occupant. Alternate housing is deemed available when it:

(A) Is sufficient in size to accommodate the family;

(B) Is free of health and safety hazards;

(C) Is located such that the occupants may commute to their place(s) of employment, schools, and other centers of family activity within usual and customary commutation time periods effective in the area;

(D) Is within the financial means of the occupant, based on 25 percent of adjusted household income. Occupants who qualify for available low-income or other government rent subsidies shall be considered able to assume financial responsibility for similar alternate housing. For the purpose of this subparagraph, housing costs shall include utilities costs, and adjusted household income shall be computed using the total gross income of household members (excluding the earnings of persons under 18, except where such persons are head of the household or a spouse), with the following exceptions:

(*1*) $25 per month for each person under 18 or full-time student over 18 except when such an individual is a head of household;

(*2*) $25 per month for each elderly (over 62) or handicapped adult, except where they are head of the household; and

(*3*) Expenses resulting from unusual financial demands upon a household, as approved by the Associate Director or his/her designee.

(E) Does not impose an undue burden upon the occupant in his/her plans to secure permanent housing.

(ii) The occupant is in compliance with the terms of the rental contract/agreement including:

(A) Prompt payment of utility, rent, and other appropriate charges;

(B) Reimbursement to the Government where all or a portion of the temporary housing assistance represents a duplication of benefits or for other charges as authorized by the Associate Director or his/her designee;

(C) Maintenance of the temporary housing unit in a manner normally expected of a tenant; and

(D) Utilization of the unit for purposes of a family dwelling, solely for the occupant's household.

(4) *Rental Policy.* No rental shall be established for the first twelve months of occupancy in temporary housing. Such twelve months shall include occupancy in transient accommodations. Thereafter, provided alternate housing resources are unavailable, rentals shall be established based on the fair market rent as established by the appropriate official of the Federal Emergency Management Agency (excluding utilities costs) for each type and size of temporary accommodation being furnished. Such rentals shall be adjusted to take into consideration the financial ability of the household as described in paragraph (k)(3(i)(A) of this section. Based on a recertification review, occupants will be notified of the date and amount of the first rental payment 30 days before the expiration of the first twelve months of occupancy.

(5) *Termination of Assistance.* (i) Temporary housing assistance may be terminated on a 30-day written notice after which 30 days the occupant may be liable for such additional charges as are deemed appropriate by the Associate Director his/her designee. Temporary housing assistance may be terminated for reasons including, but not limited to, the following:

(A) A determination has been made through the recertification process that alternate housing is available to the occupant, as described in paragraph (k)(3)(i) of this section.

(B) Failure on the part of the occupant to utilize or maintain the temporary housing provided in the manner normally expected of a tenant. Normal wear and tear excepted, the occupant shall be liable for all damages to the property.

(C) Failure on the part of the occupant to pay established rent, utilities, or other appropriate charges.

(D) Determination that the temporary housing assistance was obtained either through misrepresentation or fraud.

(ii) Termination of temporary housing may be in the form of eviction from temporary housing or termination of financial assistance. Any appeals by the occupant from a termination notice shall be processed and resolved pursuant to the temporary housing pretermination procedure (24 CFR Part 470).

(l) *Insured Individuals and Families*—(1) *Provision of Temporary Housing Accommodations.* In order to avoid duplication of benefits, insured individuals and families may be provided temporary housing assistance when:

(i) There is uncertainty as to whether insurance benefits will be paid;

(ii) Payment of insurance benefits may be significantly delayed;

(iii) Insurance benefits have been exhausted;

(iv) Insurance benefits are inadequate to provide the full cost of housing on the private market; or

(v) Housing is not available on the private market.

The insured individual or family shall agree to repay the government from any insurance proceeds they receive in an amount equivalent to the fair market value of assistance provided or that portion of insurance proceeds received for such housing, whichever is less. Minimal Repair Program recipients shall repay the government the cost of any repairs or replacement completed under the Minimal Repair Program which are covered by insurance, or the amount received from insurance proceeds for the damaged item repaired under this program, whichever is less.

(2) *Exhaustion of Insurance Benefits.* (i) Applicants who are determined eligible for temporary housing and who have received benefits may be provided temporary housing upon presentation of proof that insurance has been exhausted and temporary housing remains a need. These applicants shall be eligible for rent free temporary housing assistance not to exceed twelve months following exhaustion of insurance benefits if the criteria for continued assistance, paragraph (k)(3) of this section, are met.

(ii) For applicants determined eligible for temporary housing and who received partial insurance benefits, the period of temporary housing assistance shall commerce with the first month of partial assistance.

(m) *Disposition of Temporary Housing Units*—(1) *Sale.* The Associate Director or his/her designee may sell any temporary housing unit acquired by purchase directly to occupants of temporary housing for their use as permanent housing. Such sales shall be at prices that are fair and equitable, adjusted to take into consideration the reasonable ability of the purchaser to pay. Such sales shall be made subject to the following conditions:

(i) The unit is to be used as a primary residence;

(ii) The unit is adequate for family size and composition;

(iii) The purchaser has sufficient resources to purchase and relocate the unit; and

(iv) The purchaser has a suitable site for placement of the unit. (A suitable site shall be defined as one that complies with local codes and standards).

The purchaser must be informed that he/she may have to bring the unit up to applicable codes and standards.

(2) *Transfer.* The Associate Director may sell, lease, or donate temporary housing units purchased under Section 404(a) of the Act Directly to States, other governmental entities, or voluntary organizations. As a condition of such transfer, the Associate Director shall require that the recipient:

(i) Comply with the provision of § 205.13 of the regulations requiring non-discrimination in the distribution and occupancy of temporary housing; and

(ii) Utilize the units provided for the initial purpose of providing temporary housing for victims of major disasters or emergencies.

The Associate Director may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer cited above.

(n) *Mortgage and Rental Payments.* Temporary assistance in the form of mortgage or rental payments may be paid to or provided on behalf of applicants who, as a result of major disaster, have received written notice of dispossession or eviction from dwelling by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice, the purpose of which is to notify an occupant of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of any contract of sale, which would result in the occupant's dispossession or eviction from his dwelling. Applications for this type of assistance may be filed up to one year following the date of declaration of the major disaster. This assistance may be provided for a period not to exceed one year or for the duration of the period of financial hardship, whichever is less. The location of the dwelling of an applicant for assistance under this section shall not be a condition of eligibility.

(o) *Appeals*—(1) *Eligibility Determination.* An applicant declared ineligible for temporary housing and whose application is not scheduled for reactivation at a later date, or an applicant whose application has been canceled for cause, shall have the right to appeal such a determination within 15 calendar days following notification of such action. The Associate Director or his/her designee shall consider the appeal within two weeks after receipt of the appeal. The applicant shall receive written notice of the disposition of the appeal. The decision of the Associate Director or his/her designee is final.

(2) *Termination.* An occupant who has been notified of his/her termination from temporary housing as described in paragraph (k)(5) of this section shall have the right to appeal the decision within five (5) business days after receipt of such notice. Such appeals shall be made and resolved in accordance with pretermination procedures contained in Federal regulations (24 CFR Part 470).

(p) *Receipts.* All monies received from rental charges, insurance proceeds, deposit refunds, proceeds of sale of temporary housing units or furniture, and other receipts as appropriate, shall be deposited as general receipts in the U.S. Treasury under established procedures.

(q) *Reports.* The Associate Director or the Federal Coordinating Officer may require such reports, plans and evaluations as they deem necessary to carry out their responsibilities under the Act and these regulations.

(r) *Federal Responsibility.* The Federal responsibility for the operation of a temporary housing program shall not exceed eighteen months from the date of the declaration of the major disaster by the President, unless this period is extended by the Associate Director based on his/her determination that such extension is in the public interest. The Associate Director may provide government property or other resources to a State, other governmental entity, or voluntary organization for the management and operation of a temporary housing program.

(Sec. 404, Pub. L. 93-288, 88 Stat. 154 (42 U.S.C. 5174); Executive Order 11795, as amended by E.O. 11910, 39 FR 25939; Delegation of Authority, 39 FR 28227)

[43 FR 8765, Mar. 2, 1978. Redesignated at 44 FR 62517, Sept. 28, 1979]

§ 205.46 Disaster legal services.

(a) Legal services, including legal advice, counseling, and representation in non fee-generating cases, except as provided in paragraph (b) of this Section, may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this Section, "low-income individuals" means those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster. In cases where questions arise about the eligibility of an individual for legal services, the Regional Director or his/her representative shall make a determination.

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regulations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Director or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Director or his/her representative to private lawyers, through existing lawyer referral services, or, where that is impractical or impossible, the Regional Director may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

(c) When the Regional Director determines after any necessary consultation with the State Coordinating Officer, that implementation of this section is necessary, provision of disaster legal services may be accomplished by:

(1) Use of volunteer lawyers under the terms of appropriate agreements;

(2) Use of Federal lawyers, provided that these lawyers do not represent an eligible disaster victim before a court or Federal agency in a matter directly involving the United States, and further provided that these lawyers do not act in a way which will violate the standards of conduct of their respective agencies or departments;

(3) Use of private lawyers who may be paid by the Federal Emergency Management Agency when the Regional Director has determined that there is no other means of obtaining adequate legal assistance for qualified disaster victims; or

(4) Any other arrangement the Regional Director deems appropriate.

The Associate Director shall coordinate with appropriate Federal agencies and the appropriate national, state and local bar associations, as necessary, in the implementation of the disaster legal services program,

(d) In the event it is necessary for the Federal Emergency Management Agency to pay lawyers for the provision of legal services under these regulations, the Regional Director, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the lawyers who have provided disaster legal services at the request of the Regional Director. At the Regional Director's discretion, administrative costs of lawyers providing legal services requested by him or her may also be paid.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with § 205.13, Non-discrimination in disaster assistance, of these regulations.

(Sec. 412, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5182); Sec. 601, Pub. L. 93-288 (42 U.S.C. 5201); Executive Order 11795 as amended by E.O. 11910 at 41 FR 15681; Delegation of Authority, 41 FR 19365; amended by 43 FR 3627)

[43 FR 19230, May 4, 1978. Redesignated at 44 FR 56172, Sept. 28, 1979 and corrected at 44 FR 62517, Oct. 31, 1979]

§ 205.47 Disaster unemployment assistance.

The Secretary of Labor, consistent with the delegation of authority to him by the Secretary of the United States Department of Housing and Urban Development dated Aug. 13, 1974 (39 FR 33020), will (a) provide assistance to individuals unemployed as a result of a major disaster, and (b) provide reemployment assistance services under section 407 of the Act and under other laws administered by the Department of Labor to individuals who are unemployed as a result of a major disaster and (c) issue such rules and regulations as may be necessary and appropriate. Such regulations will be issued in 20 CFR Ch. V, Part 625 (34 FR 19656, December 13, 1969), as amended.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979]

§ 205.48 Individual and family grants programs.

(a) *General.* The Governor may request that Federal funds be made available to a State for the purpose of such State making grants to individuals and families who as a result of a major disaster are unable to meet necessary expenses or serious needs. The grant program authorized by this section will be 75 percent Federally funded and 25 percent State funded. The Governor of the affected State or his authorized representative will administer the grant program. The grant program is intended to provide funds to disaster victims to permit them to meet those necessary expenses or serious needs for which other governmental assistance is either unavailable or inadequate. The grant program is not intended to indemnify all disaster losses or to purchase items or services that may generally be characterized as nonessential, luxury, or decorative.

(b) *Definitions as used in this section.* (1) "Necessary expense" means the cost of an item or service essential to an individual or family to mitigate or overcome an adverse condition caused by a major disaster.

(2) "Serious need" means a requirement for an item or service essential to an individual or family to prevent or reduce hardship, injury, or loss caused by a major disaster.

(3) "Family" means a social unit comprised of husband and wife and dependents, if any, or a head of a household, as these terms are defined in the Internal Revenue Code of 1954.

(4) "Individual" means a person who is not a member of a family, as defined in paragraph (b)(3) of this section.

(5) "Assistance from other means" means assistance including monetary or in-kind contributions from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family.

(c) *National eligibility criteria.* In administering the Individual and Family Grant Program, a State shall determine the eligibility of an individual or family for a grant to meet a necessary expense or serious need in accordance with the following criteria.

(1) *General.* (i) In order to qualify for a grant under this section, an individual or family representative must certify:

(A) That application has been made to other available governmental disaster assistance programs for assistance to meet a necessary expense or serious need and that neither he/she, nor any member of his/her family has been determined to be qualified for such assistance or, for demonstrated reasons, any assistance received has not satisfied any such necessary expense or serious need (except as provided for in paragraph (c)(1)(ii) of this section).

(B) That with respect to the specific necessary expense or serious need or portion thereof for which application is made, neither he/she, nor to the best of his/her knowledge, any member of his/her family, has previously received or refused assistance from other means.

(C) That should the individual or family receive a grant and assistance from other means later becomes available to meet the necessary expense or serious need, the individual or family shall refund to the State that part of the grant for which assistance from other means has been received.

(ii) Farmers, ranchers, and persons engaged in aquaculture must apply to either the Farmers Home Administration (FmHA) or the Small Business Administration (SBA) for loan assistance, and obtain a denial of such assistance from either FmHA or SBA before they may be considered eligible for a grant under this section. If applicants for FmHA loan assistance are unable to obtain such assistance because, in FmHA's determination, they are able to obtain necessary credit from other sources, they will be considered ineligible for grant assistance for those items or services for which assistance may be provided by the FmHA's Emergency Loan Program.

(iii) Individuals or families who incurred a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their residency in the major disaster area or within the State in which the major disaster had been declared.

(iv) Where an individual or family is otherwise eligible for a grant to repair, replace, or rebuild a home or to purchase insurable furnishings to be contained in the home, States must determine whether the assistance is prohibited by the Flood Disaster Protection Act of 1973; i.e., where the assistance relates to a building located in a Federal Insurance Administration (FIA) identified special flood hazard area of a community not participating in the National Flood Insurance Program (NFIP), as shown on an FIA flood hazard boundary map or flood insurance rate map which has been in effect longer than one year (see 42 U.S.C. 4001 et seq.). If assistance is not prohibited, the State must determine from a review of the FIA map whether the building is located in a special flood hazard area of a participating community and, if it is, the applicant must purchase a flood insurance policy as a condition for the assistance in order to reduce future avoidable claims for Federal or State disaster assistance. These determinations by States are required in order for the Office of Disaster Response and Recovery to comply with its obligations under sections 102(a) and 202(a) of the Flood Disaster Protection Act. The policy must provide coverage in an amount at least equal to the project cost; i.e., the cost of repairing, replacing, or rebuilding a dwelling (less any land value) and the cost of insurable personal property to be located in the dwelling, which are to be covered by the Individual and Family Grant Program. After a determination that flood insurance is required, and after disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance. In this regard, the first $25.00 of the initial premium for flood insurance shall be considered a necessary expense.

(2) *Eligible categories.* Assistance under this section may be made available to meet necessary expenses or serious needs by providing essential items or services in the categories set forth below:

(i) Medical or dental.

(ii) Housing. With respect to private owner-occupied primary residences (including mobile homes), grants may be authorized to:

(A) Repair, replace, rebuild;

(B) Provide access;

(C) Clean or make sanitary; or

(D) Remove debris from such residences. Any debris removal will be limited to the minimum required to remove health hazards or protect against additional damage to the residence;

(E) Provide minimum protective measures required to protect such residences against the immediate threat of damage; and

(F) Move mobile homes to prevent or reduce damage.

(iii) Personal property.

(A) Clothing;

(B) Household items, furnishings or appliances;

(C) Tools, specialized or protective clothing or equipment which are essential to or a condition of a wage earner's employment;

(D) Repair, clean, or sanitize any eligible personal property item; and

(iv) Transportation.

(A) Grants may be authorized to provide transportation by public conveyance provided that the requirement for this transportation was the direct result of the disaster.

(B) Grants may be authorized to private transportation, if the requirement for this transportation was the direct result of the disaster, and transportation by public conveyance is inadequate or unavailable.

(v) Funeral expenses. Grants for funeral expenses will be based on minimum expenditures for interment or cremation.

(3) *Ineligible categories.* Assistance under this section will not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses.

(ii) Improvements or additions to real or personal property.

(iii) Landscaping.

(iv) Real or personal property used exclusively for recreation.

(v) Financial obligations incurred prior to the disaster.

(vi) Any necessary expense or serious need or portion thereof for which assistance was available from other means but was refused by the individual or family.

(4) *Other categories.* Should the State determine that an individual or family has an expense or need not specifically identified as eligible, the State shall provide a factual summary to the Regional Director, and request a determination.

(d) *State request to participate in the Individual and Family Grant Program.* In order to make assistance under this section available to disaster victims, the Governor must file with the appropriate Regional Director a request which includes the following:

(1) A certification that assistance under the Act and from other means is insufficient to meet necessary expenses or serious needs of disaster victims.

(2) An estimate of the number of disaster victims who have necessary expenses or serious needs and the basis for such estimate.

(3) An estimate of the total Federal grant as identified in paragraph (f)(1) of this section.

(4) A commitment to implement an administrative plan as identified in paragraph (e) of this section.

(5) A commitment to identify specifically in the accounts of the State all Federal and State funds committed to the grant program.

(6) A commitment to maintain close coordination with the Regional Director and provide him with such reports as he may require in order to insure proper administration, including avoidance of duplication of benefits and timely availability of Federal funds.

(7) A commitment to implement the grant program throughout the major disaster area designated by the Associate Director.

(8) A certification that the State will pay its 25 percent share of all grants to individuals or families. If the State is unable immediately to pay its 25 percent share, the State may request an advance of Federal funds as identified in paragraph (h) of this section.

(e) *State Administrative Plan.* (1) The State will develop a plan for the administration of the Individual and Family Grant Program that includes but is not limited to:

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Methods and procedures for notification of potential applicants to include the publication of pertinent time limitations.

(iii) Provisions for accepting applications, including the establishment of local application centers.

(iv) Administrative procedures for:

(A) Verifying necessary expenses and serious needs.

(B) Determining applicant eligibility and grant amounts by a panel of at least three State employees.

(C) Determining the need for flood insurance.

(D) Processing applicant appeals.

(E) Disbursing grants.

(F) Verifying grant expenditures by sampling not less than five percent of approved grants.

(G) Recovering grant funds obtained fraudulently or expended for unauthorized items or services.

(H) Conducting a State audit.

(v) National eligibility criteria as defined in paragraph (c) of this section.

(vi) Provisions for compliance with §§ 205.13, 205.15 and 205.18 of these regulations and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975) and the Federal Insurance Administration Regulations, 44 CFR Chapter I, Subchapter B.

(2) The Governor or his authorized representative may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement the Individual and Family Grant Program.

(3) The Regional Director will review the State administrative plan for each disaster for which assistance is requested under this section to insure that the requirements of these regulations have been met. The Regional Director may defer approval of a State administrative plan until any deficiencies have been corrected.

(4) The State administrative plan is to be made a part of the State's emergency plan, as described in § 205.4 of these regulations.

(f) *Limitation on grants.* (1) The Federal grant under this part shall be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expense not to exceed 3 percent of the total Federal grant, and shall be made only on condition that the remaining 25 percent of such actual cost is paid to such individuals and families from funds made available by the affected State.

(2) An individual or family shall not receive a grant or grants under the provisions of this section aggregating more than $5,000 with respect to any one major disaster. Such aggregate amount shall include both the Federal and State share of the grant.

(g) *Time limitations.* (1) In the administration of the Individual and Family Grant Program authorized under section 408 of the Act, the following time limitations will be applicable except as described in paragraph (g)(2) of this section:

(i) Should the Governor decide to request assistance under this section, he must submit such request no later than seven days following the date on which the major disaster was declared and in the manner set forth in paragraph (d) of this section.

(ii) The State will accept applications from individuals or families for a period of 60 days following the date on which the major disaster was declared.

(iii) Any application filed after the 60-day period stated above must be reviewed by the State to determine whether the late filing was the result of extenuating circumstances or conditions beyond the control of the individual or family. If such conditions or circumstances are demonstrated, the State will determine that good cause existed for late filing and accept that application as though it had been filed on a timely basis; otherwise the application will be rejected.

(iv) No application will be accepted by the State if it is filed more than 90 days following the date on which the major disaster was declared.

(v) All administrative activities including the submission of final reports, State audits, and vouchers to the Regional Director, shall be completed by the State within 180 days following the date on which the major disaster was declared.

(2) The Regional Director may extend any time limitation set forth above for a period not to exceed 30 days. If all appeals to the State have been resolved and all grants disbursed, the Regional Director may further extend the 180-day time limitation contained in paragraph (g)(1)(v) above for a period not to exceed 90 days. The Associate Director may further extend any of the above time limitations.

(h) *Advance of State share.* (1) If the State is immediately unable to pay its 25 percent share of the grants to be made under this section, the Governor may request that this amount be advanced by the Federal Government. Requests for such advances will be made to the Regional Director and will include the following:

(i) A certification that the State is immediately unable to pay its 25 percent share and an explanation of the reasons therefor.

(ii) A statement as to the specific actions taken or to be taken to overcome the inability to provide the State share, including a time schedule for such actions.

(iii) A commitment to repay the Federal advance at the time the State is able to do so.

(iv) An estimate of the total amount needed to meet the 25 percent State share.

(v) An agreement to return immediately upon discovery all Federal funds advanced to meet the State's 25 percent share which exceeds actual requirements.

(2) Failure to repay the advance of the State share, in accordance with the time schedule in paragraph (h)(1)(ii) of this section, may result in the withholding by the Federal Government of subsequent advances under this section.

(3) Any advance of the State's share not repaid to the Federal Government by the repayment date established by the time schedule in accordance with paragraph (h)(1)(ii) of this section, may, at the discretion of the Associate Director, be recovered by the offset of Federal funds to which the State would otherwise be entitled under other sections of this Act.

(i) *Approval—Authorization of Funds.* (1) The Regional Director may approve Federal assistance and authorize advances of funds under this section upon his determination that:

(i) All required certifications and commitments have been completed by the Governor,

(ii) The administrative plan provided by the State to implement the Individual and Family Grant Program meets the requirements of these regulations.

(2) The Regional Director may authorize Federal assistance based on his estimate of the amount required to meet the necessary expenses or serious needs of disaster victims.

(j) *Reimbursement to the State.* Reimbursement to the State of the Federal share of eligible costs will be on the basis of a voucher filed by the State and approved by the Regional Director. If a State presents a voucher which includes a claim for a grant that is improperly or inadequately documented, or not made in conformity with the State Administrative Plan, such claim shall be suspended by the Regional Director. The State may include a claim for a grant that was made on the basis of fraudulent information, or that was misapplied by the grant recipient. If the State has taken the action required by its Administrative Plan, but has been unable to recover the grant funds, the claim may be approved for payment by the Regional Director.

(k) *Audits.* The State shall perform a site audit on each grant program in accordance with audit guidelines provided by the FEMA Inspector General. All claims are subject to Federal audit.

(Sec. 408, Pub. L. 93-288, 88 Stat. 156 (42 U.S.C. 5178); E.O. 11795 as amended by E.O. 11910, 39 FR 25939; Delegation of Authority, 29 FR 28227)

[42 FR 35644, July 7, 1977, as amended at 43 FR 22030, May 23, 1978. Redesignated at 44 FR 56172, Sept. 28, 1979 and corrected at 44 FR 62517, Oct. 31, 1979]

§ 205.49 Food commodities.

(a) The Associate Director will assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) In carrying out his responsibilities in paragraph (a) of this section, the Associate Director may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 410(b) of the Act.

§ 205.50 Relocation assistance.

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (Pub. L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§ 205.51 Crisis counseling assistance and training.

The Secretary of Health, Education, and Welfare, consistent with the Delegation of Authority to him by the Secretary of the United States Department of Housing and Urban Development (Docket No. 75-309, 40 FR 10705, dated March 7, 1975) will, subject to the general policy guidance and coordination of the Associate Director, (a) provide professional counseling services to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath; (b) provide financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers; and (c) issue such rules and regulations as may be necessary and appropriate to effectuate this delegation.

[40 FR 23253, May 28, 1975; 40 FR 28609, July 8, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979]

Subpart E—Public Assistance

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority.

SOURCE: 45 FR 53957, Aug. 13, 1980, unless otherwise noted.

§ 205.70 General.

This subpart provides policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs of Pub. L. 93-288, as amended. It includes criteria for determining eligibility of assistance under Sections 305, 306, 402, 403, 415, 416, 418, and 419 of Pub. L. 93-288, as amended. Refer also to Subparts J, K, and M, and to 44 CFR Parts 9 and 10 of these regulations for additional guidance related to eligibility determinations.

§ 205.71 Definitions.

(a) "Educational institution" means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965;

(2) Any secondary school as defined by section 801(h) of the Elementary

and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) "Predisaster condition" means the state of repair or serviceability of a facility immediately prior to the disaster, taking into consideration prior damages, age, deterioration, and any limitations upon its operation.

(c) "Predisaster design" means the size and capacity of a facility when the major disaster occurred, taking into account its major features, as originally placed in service but updated by any modernization or expansion of the facility, prior to the major disaster, to provide added capacity for public services.

(d) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, and custodial care facility, including those for the aged or disabled, and those on Indian reservations.

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include:

(i) Buildings, structures and related items used primarily for athletic exhibitions, contests, games or other events for which admission is charged to the general public, such as athletic stadiums, gymnasiums, and swimming pools.

(ii) Buildings, structures and related items used primarily for religious purposes or primarily in connection with any part of the program of a divinity school, or department of divinity, as defined by Section 1201 of the Higher Education Act of 1965.

(2) "Utility" means buildings, structures, or systems of any power, energy, telephone, water supply, sewage collection and treatment, or other similar public service. An irrigation system is not a "utility".

(3) "Emergency facility" means those buildings, structures, or systems used primarily to provide emergency services, such as fire protection, ambulance, or rescue, to the general public.

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care, as defined by the Associate Director, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(5) "Custodial care facility" means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for such persons as the aged and disabled; such persons do not require day-to-day care by doctors or by other professionals but do require close supervision and some physical constraints of their daily activities.

(e) "Private nonprofit organization" means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit one organized or doing business under State law.

(f) "Standards" as used in this subpart means codes, specifications, or standards.

§ 205.72 Applicant eligibility.

(a) "Within the disaster area designated by the Associate Director, State or local governments, as defined in 44 CFR Part 205, Subpart A, are eligible applicants.

(b) Private nonprofit organizations or institutions, owning and operating educational, utility, emergency, medical or custodial care facilities, are eligible applicants.

(c) An Indian tribe (or authorized tribal organization or Alaskan village or organization, which exists for public service,) is also an eligible applicant. In those cases where the State is unable or unwilling to process a project application on its behalf, such applicant may submit its project application directly to the Regional Director.

(d) A public entity is eligible for assistance when its requests are submitted by a State or a political subdivision of the State. Organizations which are formed for a public purpose and whose direction and funding are provided primarily by one or more political subdivisions of the State are normally considered to be public entities.

(e) Any rural community or unincorporated town or village may be eligible when an application for Federal assistance is made by a State or a political subdivision of the State on its behalf.

(f) *Eligibility of applicants for emergency snow removal assistance.* (1) To qualify as an eligible applicant, any State or local government (as defined in section 102(4) or (6), of the Act) must have adequately documented responsibility for emergency snow removal from thru public roads or thru public streets.

(2) Private non-profit organizations are not eligible.

(g) Under Pub. L. 93-288 grants to eligible applicants are discretionary and are based on FEMA grant approval for proposed work and subject to any conditions upon which that grant approval was based.

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980]

§ 205.73 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be for a purpose set forth in the Act and these regulations.

(2) Be required as the result of the major disaster or emergency, and

(3) Be located within a disaster area designated by the Associate Director.

(b) *Work under other Federal agency programs.* Disaster assistance under the Act is not available for work which other Federal agencies may fund under their own statutory authorities, except under unusual circumstances approved by the Regional Director. When another Federal agency (OFA) has authority and the necessary funds available to restore facilities damaged or destroyed by a major disaster or emergency that OFA funding authority shall be used instead of FEMA funding.

(c) *Restoration of leased facilities.* (1) Applicant-owned facilities are eligible, except when leased and the lease places such responsibility on the lessee.

(2) Facilities owned by others but under lease to an applicant are eligible to the extent of the applicant's responsibility under the lease.

(d) *Assurances.* As a condition for any grant or loan under the Act, the State and the applicant shall provide the assurances required by the Regional Director and accompanying the project application or loan application. These assurances are legally binding when offered by the applicant and the State, and approved by the Regional Director.

(e) *Facilities serving a rural community or unincorporated town or village.* To be eligible, a facility or system not owned by a State or local government must meet the following requirements:

(1) The facility is located in and/or serves an unincorporated community, town, or village; *and*

(2) Ownership is vested in a not-for-profit organization; *and*

(3) Proposed work on the facility satisfies eligibility requirements otherwise applicable to public facilities under Section 306 of the Act and must be necessary to restore essential public services on an emergency basis.

(f) *Grants-in-lieu.* A grant-in-lieu is a categorical grant, based on work eligible under section 306 or 402(e) of the Act, which the grantee may use to provide a larger, more elaborate or equivalent facility that as a minimum replaces the design or capacity of the public facility damaged or destroyed by the major disaster. The facility to which the grant-in-lieu is applied must be restored to its predisaster capacity and serve the same purpose or function as the damaged facility.

(g) *Time limitations.* Timely performance of eligible work is necessary to minimize costs of work and to avoid delays in restoration of public services. The Regional Director may approve reimbursement to an applicant for eligible work performed prior to the Federal damage survey, but within the time limitations and the disaster-affected area. When, due to circumstances not beyond its control, an applicant fails to comply with the approved time limitations, the Associate Director, or his/her designee may decline to approve an extension of time for starting or completing the approved work.

(h) *Maintenance.* Routine or regular maintenance is not eligible. To be eligible, repairs or replacements of damaged facilities which are of the types usually performed as maintenance, must:

(1) Be of disaster scope and magnitude, and

(2) Be essential to restore the disaster condition and design of the damaged or destroyed facilities, and

(3) Be performed on an expedited basis.

§ 205.74 Emergency work.

(a) *General.* (1) Emergency work is eligible under section 305 or 306 of the Act to provide emergency protective measures to save lives, to protect public health and safety, and to protect property as the result of a declared major disaster or emergency; under section 306 or 403 for debris removal; under section 415 for Emergency Communications; and under Section 416 for Emergency Public Transportation.

(2) When immediately necessary and no lesser emergency work is feasible, permanent restorative work on facilities damaged or destroyed by a major disaster or emergency may be expedited as emergency work under sections 305 or 306 of the Act. Eligibility of such emergency work shall be determined separately from any other permanent restorative work eligible under section 402 of the Act.

(3) In determining public interest for emergency work for which these regulations require such determination, the Regional Director shall determine whether the work is necessary to:

(i) Eliminate immediate threats to life, public health, and safety; or

(ii) Eliminate an immediate hazard which threatens substantial destruction of undamaged improved public or private property; or

(iii) Assure economic recovery of the affected community to the benefit of the community-at-large; or

(iv) Provide emergency facilities when necessary to resume essential public services.

(4) In determining whether such emergency work is in the public interest, the Regional Director may require certification by local, State, or Federal health officials, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat. Refer also to 44 CFR 205.70.

(b) *Debris removal.* No such work shall be performed unless the affected State or local government first provides to the Regional Director written assurances of rights of entry and indemnification required by FEMA. When approved in the public interest by the Regional Director the following types of emergency work are eligible:

(1) Clearance of debris and wreckage from publicly and privately owned land and waters.

(2) Demolition and removal of public and private buildings damaged beyond repair.

(3) Cleanout of reserviors, debris catch basins, streams, and opening of drainage channels or facilities only under section 306 or 403 of the Act. Such clearance shall be limited to the removal of materials which are foreign to that facility and which were deposited by the disaster. It is not in the public interest to clean out debris catch basins at Federal expense that have a remaining capacity of storing debris that could be expected from a five-year storm. In determining public interest, past history of clean out of such facility shall be considered. Some removal of debris, deposited prior to the Presidential declaration, may be required as a condition for Federal funding under this section.

(c) *Emergency protective measures.* (1) The Regional Director may approve emergency protective measures under section 306(a)(4) of the Act which he/she determines are in the public interest. Such emergency work to protect property must be justified further by favorable benefits when compared to Federal costs involved and by providing widespread benefits to the community-at-large.

(2) Emergency protective work to prevent additional damage to im-

proved property is eligible only when the effects of a declared major disaster or emergency have severely damaged or destroyed facilities and further destruction to improved property is threatened soon by subsequent similar disasters or emergencies. When approved, such emergency work is limited to the essential measures required to protect the community-at-large against similar disasters or emergencies that would be expected to occur not less frequently than every five years, or to restore protection as existed prior to the disaster, whichever is lesser.

(3) Removal of health and safety hazards. The following are examples of measures that may be eligible when approved in the public interest by the Regional Director: disposal of dead animals; drainage of water trapped as a result of a major disaster or emergency; pumping of basements only where there is flooding of numerous basements in the disaster-affected area; decontamination of private wells or pumping septic tanks only where pollution problem is widespread; vector control of insects involving a serious health hazard to humans.

(4) Landslides. To be eligible for FEMA reimbursement, emergency work shall be performed during the incidence period for the major disaster or emergency, except under unusual circumstances where the Regional Director determines that the proposed work is primarily disaster-related and in the public interest. Examples are debris removal, simple drainage measures, and emergency repairs to damaged public facilities. Permanent stabilization of a landslide is not attainable usually by such emergency measures.

(5) Emergency access. An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant or grantee for operation and maintenance may be eligible for emergency repairs or replacement provided:

(i) The Regional Director determines that emergency repair or replacement of the facility is in the public interest, or economically eliminates needs for temporary housing, with no alternative access facilities immediately available within a reasonable distance, and

(ii) The necessary emergency work can be provided on a one-time basis can and will in no way obligate the Federal Government to fund further emergency work or maintenance.

(6) Emergency snow removal assistance.

(i) Definitions:

(A) "Local roads and streets" means local county roads and city streets which do not serve thru traffic and are of only local interest. Their main function is to provide access to abutting property.

(B) "Collector roads and streets" means local collector roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest. One of their major functions is to provide access of abutting property.

(C) "Minor arterial roads and streets" means roads and streets which serve thru traffic and provide access to higher type roads, connecting communities in nearby areas in addition to serving adjacent property.

(D) "Principal arterials" means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property. (For further clarification, refer to the functional classifications for highways as determined pursuant to 23 CFR 470.107(b)(3)).

(ii) *Eligible work.* When approved by the Regional Director, the following types of facilities are eligible:

(A) Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterials.

(B) Tracks and rights-of-way of urban mass transit systems only when necessary for the resumption of urban high volume traffic.

(iii) *Ineligible work.* The following types of facilities are not eligible:

(A) Local roads and streets (these normally will include alleys and cul-de-sacs and residential streets where

24-hour parking is permitted during snow emergencies).

(B) Other facilities including:

(*1*) Parking lots (except where needed and used for emergency snow removal operations)

(*2*) Playgrounds

(*3*) Recreational or park facilities

(*4*) Airports (except for emergency road access)

(*5*) Public housing authorities (except for emergency entrance to housing areas)

(*6*) Cultural facilities

(*7*) Hospitals and other medical care facilities (except for emergency access).

(7) Work that is immediately necessary as the result of a major disaster and directly related to permanent work eligible to be preformed later under section 402 of the Act will normally be approved by the Regional Director in the public interest as emergency protective measures under section 306 of the Act.

(8) Water control facilities. Emergency work on water control facilities shall be limited to that required to insure the structural integrity of the damaged facilities or to restore disrupted public services when necessary to meet emergency needs of the community-at-large.

(9) Ice jams. FEMA assistance to remove ice jams is not eligible.

(10) Emergency protective facilities installed will be eligible for removal under the Act only when such facilities are directly affecting the operations of, or access to, public facilities required by the applicant in its normal day to day operation.

(d) *Emergency communications.* The Regional Director is authorized as the result of an emergency or major disaster to establish emergency communications and make them available to State and local government officials and other persons as he/she deems appropriate. Such emergency communications are ordinarily intended for use as necessary to carry out the disaster relief functions. Communications provided under this section are intended to supplement but not replace normal communications that remain operable after a major disaster. These emergency communications will be discontinued immediately when the essential emergency communications needs of FEMA and the community have been met.

(e) *Emergency public transportation.* The Regional Director may provide emergency public transportation in a disaster-affected area to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible. Any transportation provided under this section is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding of such emergency transportation will be discontinued by the Regional Director as soon as the emergency needs have been met.

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980]

§ 205.75 Permanent work.

(a) *General.* (1) Applicability. Permanent work is eligible under section 402 of the Act and these regulations and includes help to eligible applicants to repair, restore, reconstruct, or replace eligible facilities on the basis of the design of the facilities as they existed immediately prior to the disaster and in conformity with applicable standards. Criteria for determining eligibility of permanent work are the same for categorical, flexible funding, and small project grants.

(2) Standards. (i) To be applicable for Federal grant assistance under section 402 of the Act, standards for repairs, or for new construction, must be in writing, formally adopted, enforced, and in general use when the major disaster occurred, except:

(A) Those standards prescribed by the Associate Director

(B) Those standards authorized as deviations by the Associate Director.

(ii) In those cases where no standards are applicable, Federal grant assistance for permanent work under the Act shall be limited to restoring the facility to its predisaster condition and predisaster design to the extent practicable.

(iii) In restoring damaged or destroyed facilities by use of grant assistance for permanent work under the Act, the Regional Director may authorize minor disaster proofing not required by applicable codes, specifications or standards, when in the public interest. Refer also to 44 CFR 205.70.

(iv) Under section 406 of the Act, as implemented by 44 CFR 205.402(d), the Associate Director may prescribe standards which then are applicable only to Federally-assisted projects for permanent work.

(v) Under section 402 of the Act, when the Associate Director determines that conformity to existing applicable standards will jeopardize public health and safety, he/she may authorize appropriate standards as deviations after consultations with the Regional Director, the Governor's Authorized Representative, and the applicants. Prior to the authorization of such deviations, the State or local government having jurisdiction in the affected areas shall also adopt and enforce these new standards for all like projects. Refer also to 44 CFR 205.70.

(3) Materials. For all eligible repairs, replacements, rebuilding or other restorative work, the most economical materials shall be used, taking into consideration the following: Predisaster design and condition of the facility; current applicable standards, if any; and predisaster public services or usage of the facility. Consideration shall also be given to protection of the environment (44 CFR Part 10) and to floodplain management, if applicable, (44 CFR Part 9).

(4) Public Interest. Refer also to 44 CFR 205.70. In determining whether permanent work is in the public interest, the Regional Director shall determine that:

(i) The applicant and the work involved are eligible under the Act and these regulations.

(ii) The work is necessary for the benefit of the community-at-large.

(iii) The outlook for continued future public use of the restored facility and the ratio of benefits to costs of restoration are favorable.

(5) Repairs. (i) A facility is considered repairable when in terms of current applicable standards for repairs in effect at the time of the disaster:

(A) It is feasible to repair the facility so that it can perform the function for which it was designed as well as it did immediately prior to the disaster; and

(B) Such repairs can be made at a cost less than the estimated cost of replacing the damaged structure on the basis of its design immediately prior to the disaster; and

(C) Such permanent repairs are a practicable alternative under 44 CFR 205, Subpart M, 44 CFR Part 9 and 44 CFR Part 10 when applicable and are determined by the Regional Director to be in the public interest. If not, the Regional Director may authorize emergency repairs under Section 306, Pub. L. 93-288, to restore essential public service and shall then decline to approve any permanent restorative work in accordance with 44 CFR Part 9.

(ii) If the facility was in a damaged or unsafe condition prior to the major disaster, the applicant shall agree to pay the cost of correcting any such conditions as a prerequisite to Federal assistance.

(iii) Only those repairs will be approved which restore the portions of the structure damaged by the major disaster.

(6) Replacement. If a damaged facility is not repairable to predisaster condition as determined by the Regional Director, approved restorative work shall include replacement of the facility on the basis of its predisaster design, in conformity with applicable standards for new construction. Refer also to 44 CFR Parts 9 and 10 and to 44 CFR Part 205, Subpart M, for additional guidance where applicable.

(7) Relocation. When the Regional Director determines that there is a practicable alternative to restoring a facility in a high hazard area he/she may approve relocation to the less hazardous site. In each such case an environmental assessment is required and the applicant shall provide the new site. Refer also to 44 CFR 205.76(e)(6).

(8) Feasibility studies. In those cases where the decision to repair or to replace the damaged facility depends upon the relationship between repair costs and replacement costs, and the project is of sufficient magnitude, a feasibility study may be undertaken.

(9) Limited use facilities. Facilities which were in limited use prior to the disaster, or were being used for other purposes than originally designed, may be eligible for assistance only to the extent necessary to restore immediate predisaster capacity for such use.

(10) Inactive facilities. Facilities that were not in active use at the time of occurrence of the major disaster are not eligible except in those instances, as determined by the Regional Director, where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

(11) No action. (i) The Regional Director may decline to approve Federal funding to restore facilities at the original site when such facilities were subject to frequent repetitive heavy damages or destruction.

(ii) The Regional Director shall decline to approve Federal funding when he/she determines in accordance with 44 CFR Part 9, 44 CFR Part 10, or 44 CFR Subpart M that FEMA funding is barred. For each such determination, there is no flexible funding option under Section 402(f) or in lieu contributions under Section 419 Pub. L. 93-288, as amended.

(12) Nonessential features. Although constructed and maintained by the applicant, non-functional features of a facility only of aesthetic value are not eligible.

(13) Furnishings and equipment. Comparable used or surplus furnishings and equipment will be approved as replacement items when available. Only those functional furnishings and equipment essential to the maintenance and operation of the facility are eligible.

(14) Consumable supplies. Consumable supplies damaged or lost in a disaster are eligible for replacement but limited to a 30-day requirement of each item replaced. However, the Regional Director may approve additional requirements for certain items for which he determines that minimum economical stockage levels exceed 30 days.

(15) Seeding. Seeding shall normally be limited to broadcast seeding without mulching or fertilizer during the regular seasons when such work is performed locally. The Regional Director may approve broadcast seeding to retard erosion in disaster-affected areas and in areas disturbed by eligible work.

The Regional Director may approve mulching, fertilizer, and watering only on highway slopes or where required to maintain the structural integrity of a facility, and in areas where sodding is eligible but seeding is substituted.

(16) Sodding. Sodding is not eligible except when the local practices of the applicant would require sodding as in golf greens and in certain grassy areas in parks or public places. Seeding shall be substituted whenever feasible.

(17) Landslides. Section 402 of the Act provides for restoration of damaged or destroyed facilities which are man-made features or improvements. The site is the owner's responsibility. Permanent stabilization of a landslide area can be quite costly and may not produce the desired results. When the Regional Director determines that no practicable alternative exists, he may decline to provide such grant assistance for restoration of facilities within the slide area. Permanent work to stabilize a landslide is not eligible.

(b) [Reserved]

(c) *Road and street facilities or systems.* (1) Width standards. The Associate Director has prescribed minimum bridge width standards which are applicable to bridge replacement (but not to repairs) involving FEMA funding. These standards appear in applicable handbooks and may be superseded by changes when approved by the Associate Director.

(2) Approach roads. If the approach roads were undamaged and a bridge can be replaced at the existing site without unacceptable traffic safety hazards, the Regional Director may approve eligible restoration costs to replace the bridge at that site in accordance with current applicable standards. If relocation of the bridge is approved to achieve a safer road alignment, any replacement of existing, undamaged approach roads and all other

work on approach roads not resulting directly from major disaster damages are the responsibility of the applicant. Such relocated approach roads of any replacement bridge shall conform at least to the minimum American Association of State Highway and Transportation Officials (AASHTO) standards outlined in Tables 1 thru 7, AASHTO Geometric Design Guide for Local Roads and Streets. Skewing of any replacement bridge to conform to a FEMA-approved safer alignment is eligible for Federal reimbursement. If an applicant decides not to provide at its own cost the approach roads, relocated and upgraded to minimum AASHTO standards, Federal assistance under the Act shall be limited to a replacement bridge at the original location with the same capacity as existed at the time of the disaster and with width not exceeding the minimum safe standards stated above.

(3) Sidewalks. Sidewalks on bridges are not eligible unless they existed on the damaged bridge prior to the disaster, or are required by current, applicable standards.

(4) Waterway openings. In the design of bridge and culvert waterway openings, consideration will be given to the drainage area involved above and below the bridge site. Federal regulations pertaining to the National Flood Insurance Program provide for prevention of "new enroachments" into 100-year floodway. However, the replacement of bridges under the Act which were damaged or destroyed is not "new encroachment" within the meaning of those regulations. Waterway openings for bridges and culverts shall be based on predisaster design and capacity in accordance with current applicable standards and additional guidance in 44 CFR Part 205, Subpart M, 44 CFR Part 9 or 44 CFR Part 10.

(5) Floodway. Work in floodway related to bridge restoration, including lining and straightening or bank protection such as rip-rap that did not exist prior to the major disaster, is not eligible unless such work will reduce overall project costs of new construction eligible for Federal funding.

(6) Traffic standards. Determination of predisaster capacity for handling traffic of bridges damaged or destroyed as a result of a major disaster shall be based on the average daily traffic which the bridge carried immediately prior to the disaster.

(7) New drainage structures. Construction of new drainage structures in those cases where lack of drainage structures caused flooding damage is not eligible, except for disaster proofing. In accordance with 44 CFR Part 9 or Part 10 of these Regulations, the Regional Director may require that an applicant provide without reimbursement adequate drainage structures or erosion-resistant structures, as a condition for approval of Federal grant assistance for the placement of a fill, embankment, or other facility.

(8) Culverts. Culverts that are washed out and destroyed may be replaced by culverts of similar construction or by larger culverts if required by applicable standards. However, if a culvert is merely plugged, and no other damage has been sustained, cleaning of the culvert is routine maintenance and therefore is not eligible.

(d) *Water control facilities.* (1) Repairs or other restorative work will not exceed restoration in accordance with current applicable standards including appropriate hazard mitigation measures as practiced by the applicant throughout its system of other like facilities:

(i) Predisaster condition and design capacity,

(ii) Previously existing elevations, and

(iii) Cross sections

(2) In those cases where inadequate maintenance by the applicant prior to a major disaster significantly diminished the predisaster design or hydraulic capacity of a facility or system, the Regional Director shall require the applicant to correct the maintenance deficiencies of the entire facility or system as a condition for Federal grant approval. The approval will be limited to restoration of the design and condition of the facility or system as it existed immediately prior to the major disaster. The applicant shall submit a plan and schedule for the required maintenance work acceptable to the Regional Director before his/her approval of otherwise eligible

costs. If these conditions are not satisfied, the Regional Director may decline to approve Federal assistance. Final payment of approved Federal assistance may not be made until the design capacity of the facility or system has been restored and all maintenance deficiencies have been corrected.

(e) *Public buildings and equipment.* (1) Repairs to buildings. Where an eligible building receives extensive damage but remains structurally sound, the Federal contribution is limited to repairing the damage in accordance with applicable standards for repairs.

(2) Replacement of buildings. When a publicly-owned building is destroyed or damaged to the extent that the Regional Director determines that it would not be feasible to perform repairs, a replacement structure may be authorized, with its eligible capacity not to exceed the capacity of the original structure.

(3) Office equipment. When damage to office equipment is repairable, only repair is authorized. Comparable office equipment such as typewriters, desks and chairs, when available from Federal and State surplus or commercially, shall be procured for repalcement items.

(4) Service equipment. Police cars and motorcycles, fire trucks, public works construction and maintenance equipment, and other such equipment damaged as a direct result of the disaster, but not as the result of the disaster operations, are eligible for repair or replacement in accordance with the following criteria:

(i) Repairs. (A) Only those repairs necessary to return service equipment to its predisaster repair standards are eligible. The allowable repairs normally will not exceed the "Blue Book" retail value of the piece of equipment, less any salvage value and insurance recoveries.

(B) As a condition for Federal grant assistance for repairs, the applicant shall correct any predisaster deficiencies needed to restore the service equipment to safe operating condition without Federal assistance except for disaster-related eligible repairs.

(ii) Replacement. Non-repairable service equipment will normally be replaced with used equipment of approximately the same age and value to the extent such equipment is readily available within a reasonable time and distance. Any equipment eligible for replacement must have been in active use or temporarily out of service.

(5) Library books and publications. Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. When damage to books is repairable, only repair is authorized. Federal grant assistance shall be based on used replacements, when resonably comparable and available. Discounts normally are available and must be considered. The Regional Director may authorize equivalent replacement, such as substituting microfilm copies of newspapers and periodicals, if they can be provided at no greater Federal cost than replacement of the damaged items in kind.

(f) *Public utilities.* (1) Repair of public utility distribution systems normally requires the same general type of materials as previously existed. If more economical and satisfactory alternate materials are available, they shall be used.

(2) Cleaning of storm and sanitary sewer lines damaged by the disaster is eligible only to the extent it is disaster-related and necessary to restore adequate functioning of the system under conditions expected each year.

(3) Repair or replacement of measuring devices such as meters is eligible only if the responsibility is that of the applicant.

(4) The Federal contribution shall not provide a higher level of sewage treatment. If a higher level of treatment is required to meet State or Federal standards, the additional cost of such facilities is the responsibility of the applicant.

(g) *Facilities under construction.* (1) "Under construction" means that period of time from the initiation of construction by applicant forces to final completion of all eligible work or from the award of the prime contract to the applicant's final acceptance of the facility from the contractor. Although the applicant may have accepted certain features of the project for use, the project is considered to be under construction until it is finally accepted.

(2) Only those repairs or replacements are eligible that are necessary to restore facilities damaged or destroyed by a major disaster substantially to predisaster condition. Restoration of the site or natural setting for such facilities is the owner's responsibility and is therefore not eligible. Disaster proofing is not eligible.

(h) *Private nonprofit facilities.* (1) Eligibility criteria for restorative work on facilities owned by eligible private nonprofit organizations are the same as for like work on similar facilities owned by any eligible applicant.

(2) As a condition for Federal grant assistance, such facilities must have been operated at the time of the major disaster in a manner to carry out fully the purposes of the facilities and of the owning organization or entity, except those facilities under construction.

(3) As a condition for Federal grant assistance, the eligible owning organization shall provide all assurances normally required from any applicant in submitting a project application plus any additional assurances required by the Regional Director, including but not limited to the following: The grant recipient shall operate and maintain the restored facilities continuously after completion throughout their useful life.

(4) The eligible owning organization must provide the necessary permits and licenses to repair, restore, reconstruct or replace the facility in accordance with the project application and subsequently to maintain and operate the facility. Refer aso to 44 CFR 205.76(a)(15) and (a)(16).

(5) Repair or replacement of any educational facility is not eligible for which disaster relief assistance would not be authorized if it were a public facility under the Act, under Pub. L. 81-815, or Title VII of the Higher Education Act of 1965.

(6) Repair or replacement of any hospital or other medical care facility in any disaster-affected area is not eligible:

(i) For which disaster relief assistance would not be eligible under the Act if it were a publicly-owned facility, or

(ii) Where the Regional Director after consulting with the State hospital planning agency, determines that a significant surplus of such facilities exists, or

(iii) Where after consulting with the State hospital planning agency, he/she determines that a significant surplus of such facilities would be created by the proposed work, or

(iv) Unless the facility was in active use prior to the major disaster and providing significant medical services to the general public.

(i) *Publicly-owned parks and recreational facilities.* (1) Publicly-owned facilities which constitute physical installations in the area such as playgrounds, swimming pools, boat docks, bath houses, tennis courts, picnic tables, etc., are eligible for repair or replacement when damaged or destroyed as the result of a major disaster.

(2) Natural features of a publicly-owned park or recreational facility such as trees and shrubs may be restored to predisaster condition to the extent necessary to restore significant public services or use that the Regional Director determines to be reasonable and practicable and in the public interest.

(3) Repair or replacement of other damaged or destroyed natural areas is not eligible except to eliminate an immediate threat to public health and safety.

(j) *Removal of timber.* (1) When in the public interest, the Regional Director may approve grants to a State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster. Refer also to 44 CFR 205.76(e)(9).

(2) Approved Work Practices. Bent, twisted, downed timber of commercial value will be salvaged or cleared when approved under 44 CFR 205.75. This includes the construction of approved temporary access roads required for removal of the damaged timber.

(i) Slash created by approved timber removal may be disposed of by not more than one of the following practices when approved by the Regional Director:

(A) Prescribed burning.

(B) Drum chopping.

(C) Raking, windrowing, and burning.

(ii) Where such slash is to be burned, appropriate permits will be obtained from the Forestry Commission and/or other appropriate agency(ies), and other precautions and notifications made as required by law.

(iii) No such slash should be placed where it will interfere with existing drainage facilities.

§ 205.76 Eligibility of costs.

(a) *General.* (1) This section provides policies and guidelines for determining eligibility of costs of work eligible under the Act that may be paid to any eligible applicant or other recipient of this grant assistance. The subparagraphs which follow are generally applicable to eligibility of costs. Only reasonable costs of eligible work are reimbursable.

(2) Factors affecting eligibility of costs. To be eligible under a FEMA grant, costs must meet the following general criteria:

(i) Be necessary and reasonable for proper and efficient administration of the approved work, be allocable thereto under these regulations, and, except as specifically provided herein, not to be a general expense required to carry out the overall responsibilities of State or local governments.

(ii) Be authorized or not prohibited under State or local laws or regulations.

(iii) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(iv) Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of the unit of government of which the grantee is a part.

(v) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(vi) Not be allocable to or included as a cost of any other Federally financed program.

(vii) Be net of all applicable credits.

(3) Funding to any applicant for costs that are reimbursable by another Federal agency under its own statutory authorities is not eligible under the Act.

(4) The amount of Federal reimbursement made to an applicant under categorical funding or under a small project grant is limited to the eligible cost of performing work approved by FEMA. This limitation is not intended to restrict the type and cost of work which the applicant may choose to undertake. If the applicant performs work in excess of the approved amount, Federal financial assistance is limited to the costs of eligible work approved by the Regional Director. Flexible funding under section 402(f) of the Act, is limited to 90 percent of the estimated costs of eligible permanent restorative work.

(5) The applicant may use assistance under the Act to supplement funds available from the grant programs of other Federal agencies, or from other sources provided that:

(i) There is no duplication of benefits prohibited by section 315 of the Act, or

(ii) Such funding is not in violation of applicable laws and Federal regulations.

(6) Approval of Federal funding may be withdrawn for any project not started within approved time limitations, including extensions. Federal funding is not eligible for work performed after the approved termination date, including extensions. Refer also to 44 CFR Part 205, Subpart H.

(7) Administrative expenses. Administrative expenses attributable to requesting, obtaining, and administering FEMA grant or loan assistance are not eligible, including but not limited to the following:

(i) Preparation or processing of project applications, reports, appeals, inspection reports, audits, and claims for payment.

(ii) Performance of owners responsibilities.

(iii) Operation of Emergency Operations Center.

(iv) Salaries, wages, and expenses of State and local officials who are responsible for directing regular governmental activities.

(v) Salaries, wages, fees, and expenses of individuals or firms while engaged in the preparation and processing of damage assessments, of project applications, claims for payment and supporting documentation, including costs of damage estimates.

(vi) Office supplies and equipment.

(vii) Rent.

(viii) Telephone and telegraph expenses.

(8) Grant-in-lieu. (i) The amount for which a grant-in-lieu is approved is limited to the estimated costs of the eligible work.

(ii) Proportionate sharing of costs is not an acceptable method of determining eligible costs for a grant-in-lieu.

(iii) The only permissible basis for increasing or reducing the Federal funding under a grant-in-lieu is a substantial error or omission in defining the approved scope of eligible work or in the approved estimated reasonable costs of such work. In cases where the actual audited costs for completing the project are less than the approved grant-in-lieu, the final payment will not exceed the actual audited costs. In such cases the Regional Director or the Associate Director will make appropriate reductions in the Federal payment based on his/her determination of costs of completed betterments.

(9) Equipment rental. Rental of privately-owned equipment to perform eligible disaster work is eligible. However, the rental rates must be comparable to going rates in the locality for similar types of equipment. If not, reasonable rates as determined by the Regional Director shall be substituted in approval of project applications, or of claims. When auditable records are available, the actual audited costs of equipment may be considered in processing appeals.

(10) Hand tools, materials, and supplies. (i) Eligible: (A) Reasonable costs for materials and supplies consumed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.

(B) Costs of hand tools (shovels, handsaws, hammers, etc.), personal equipment, and protective clothing reasonably lost, worn out or destroyed through disaster use in performing eligible work.

(ii) Not eligible: Costs for losses, damage or destruction while in disaster or emergency use of radios, weapons, and other items used regularly in field operations by police and other employees whose duties do not change because of the disaster.

(11) Salvage. Salvage value of any damaged or destroyed property must be deducted in all determinations of eligibility of work and from final reimbursement to any claimant.

(12) Stockpiled items. Costs of all stockpiled items purchased under the Contributions Program (Pub. L. 920, 81st Congress, as amended) for civil defense purposes which are lost, damaged, or destroyed by a major disaster while in storage are not eligible.

(13) Insurance. (i) Cost of insurance required for performance of grant or loan assistance is eligible.

(ii) Insurance purchased by the State, the applicant, or grantee for its protection from any liability arising from assurances made to the grantor, or arising directly or indirectly from use of the grant shall be at the insured's expense and is not eligible.

(iii) The Regional Director shall reduce the grant by the actual applicable amount of insurance proceeds received by the grantee or by any prior insurance commitment for Federal assistance that is delinquent. In the event insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement is limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and up to the limit of the policy.

(14) Acquisition of lands, easements, and rights-of-way. Such acquisitions are the responsibility of the applicant, or grant recipient upon whose behalf project application was made. These costs are usually covered by the assurances accompanying the project application and are not eligible for Federal reimbursement except when approved in the public interest by the Associate

Director under unusual circumstances, requiring immediate action beyond State, applicant, or grantee's capabilities, or involving significant cost savings to the Federal Government.

(15) Licenses. The costs of Federal, State, or local licenses which are required for the grantee to operate and maintain completed facilities are not eligible. Meeting the requirements for licenses is the responsibility of the grantee.

(16) Permits. The costs of Federal, State, or local permits which are required to perform eligible work are eligible.

(17) Loss of revenue. Replacement of revenues lost as the result of a major disaster or emergency is not eligible for grant assistance.

(18) Excess utility costs. Any loss of revenue or added costs or charges for providing utility services is not eligible.

(19) National Guard. (i) Eligible: Actual projects paid by the State not otherwise federally funded for work undertaken by the National Guard on a project basis, included salaries of National Guardsmen directly engaged in project work or supervision.

(ii) Not eligible: Use of National Guard for Public safety, or other security measures.

(20) Cooperative agreements. (i) Eligible: Costs for work performed under cooperative arrangements between State or local governments, but limited to those direct costs of the performing entity, which would be eligible if the applicant had performed the work.

(ii) Not eligible: Costs for work performed under arrangement between a State or political subdivision of a State and a Federal agency, except when approved in advance by the Regional Director.

(21) Work performed by service, fraternal, and other similar organizations which do not normally contract their service for disaster relief. (i) Eligible: Only out-of-pocket costs for equipment, materials, and supplies used or consumed in the performance of eligible work.

(ii) Not eligible: Wages or salaries of member personnel engaged in disaster relief activities.

(22) Prison labor. (i) Eligible: Out-of-pocket costs to an eligible applicant of prison labor performing eligible disaster work, limited to the amount paid the prisoners in accordance with rates established prior to the disaster, and the cost of transportation.

(ii) Not eligible: Costs of food, lodging, and guards. Also, any costs for prison labor utilized by a contractor.

(23) Private nonprofit organizations. (i) Only catergorical grants may be approved by the Regional Director for such eligible grantees. No payment will be made for any work which was not within the scope of responsibility of the eligible private nonprofit organization prior to the major disaster.

(ii) Such grants shall not: (A) Be used to pay any part of the cost of facilities, supplies, or equipment which are to be used primarily for sectarian purposes; or

(B) Be used to pay costs to repair or replace: any facility, equipment, or supplies used primarily:

(*1*) For religious worship,

(*2*) For religious instruction, or

(*3*) In connection with any part of the program of a school or department of divinity.

(24) Negligence. No Federal reimbursement shall be made to any applicant for damages caused by its own negligence, by the negligence of any interested public or private organization or entity that is a direct grant recipient, or by any contractor.

(25) Interest and other financial costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith are not eligible.

(26) Governor's expenses. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State of local government and are not eligible.

(27) Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies such are county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are not eligible.

(28) Legal fees required in the administration of the grant are eligible. Legal services furnished by the Chief legal office of a State or local government of this staff solely for the purpose of discharging his general responsibilities as a legal officer are not eligible. Legal expenses for the prosecution of claims against the Federal Government are not eligible.

(29) Other. Any costs not allowable under OMB Circular 74-4 are ineligible for FEMA reimbursement.

(30) Interest on Advances. Interest earned on advances of Federal funds shall be remitted to FEMA except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Pub. L. 93-638).

(b) *Work by applicant's own forces.* (1) In addition to the provisions of 44 CFR 205.76(a), this section provides criteria for eligibility of costs specifically applicable to work by the applicant's own forces, hereinafter referred to as force account.

(2) Personnel. (i) Gross salaries or wages (including overtime) of extra employees of the applicant or grantee are eligible when the employees are engaged in the performance of eligible work, but not to exceed the going wages paid locally for such work.

(ii) Gross salaries or wages (including overtime) of regular employees of the applicant or grantee are eligible for reimbursement, but not to exceed the going wages paid locally for such work except the following types of ineligible costs:

(A) Regular salaries or wages of regularly employed policemen and firemen and of other regular employees whose duties do not change because of the disaster. Examples are levee patrollers, pumping plant operators, and building inspectors.

(B) Regular salaries of supervisory personnel other than working foremen engage primarily-and-continuously in field supervision of eligible work.

(C) All payroll costs above each employee's gross pay.

(3) Equipment. (i) The FEMA Schedule of Equipment Rates, or an alternative Schedule of Equipment Rates approved by the Associate Director, is applicable to all reimbursements for equipment that is publicly-owned or owned by other grantees.

(ii) For vehicles or equipment utilized by police, firemen, and other employees whose duties do not change because of the major disaster or emergency, only disaster-related actual costs in excess of average costs for the same period of time for the pervious three years, based on auditable records are eligible.

(iii) For permanently installed fixed equipment, such as pumping stations, only disaster-related actual costs in excess of the average costs for this same period of time for the previous three years, based on auditable records are eligible.

(c) *Contract work.* (1) Eligible: Reasonable costs for work performed by private contractors on eligible projects contracted for in accordance with State or local statutes.

(2) Not eligible: Costs incurred under the following types of contracts unless the Regional Director determines, on a case-by-case basis, that reimbursement of reasonable actual costs of eligible work is in the best insterests of the government:

(i) Cost-plus-percentage-of-cost contracts.

(ii) Contracts containing a provision which makes payment for eligible work contingent upon reimbursement under the Act.

(iii) Contracts with any contractor included on any FEMA listing of debarred contractors.

(d) *Emergency work.* (1) General. In addition to provisions of 44 CFR 205.76, (a), (b) and (c), these specific criteria apply to emergency work under the Act.

(2) Engineering and design. For emergency work such services are usually not necessary and Federal reimbursement may not be justified. The provisions of 44 CFR 205.76(e)(2) are also applicable to any engineering or design services related to emergency work.

(3) Debris removal. No Federal reimbursement will be made to an appli-

cant for its reimbursement of an individual or private organization for the cost of removing debris from his/her own property except those public entities and private nonprofit organizations eligible under section 402(b) of the Act.

(4) Snow removal. (i) FEMA reimbursement will be made to eligible applicants (see Part 44 CFR 205.72(f)(1)) in an amount not to exceed one half of the eligible costs incurred for eligible work performed in designated areas during the established incidence period, except in those unusual cases when the applicant and the State are financially unable to cost share as determined by the FEMA Associate Director.

(ii) Any applicant which requested direct Federal assistance for emergency snow removal shall reimburse FEMA for one half of the eligible costs incurred for eligible work performed in designated areas during the established incidence periods including any overhead or administrative expenses paid by FEMA to the Federal agency performing the mission assignment, except in those unusual cases as indicated in § 205.76(d)(4)(i) of this part.

(iii) The following types of costs may be eligible when approved by the Regional Director:

(A) Costs of equipment operations to perform eligible emergency snow removal. Only those types of equipment are eligible that are listed in the applicable Schedule of Rates approved by FEMA.

(B) Costs to remove stalled or abandoned vehicles and other obstructions when necessary to accomplish eligible emergency snow removal by equipment operations.

(C) Costs of mobilization and demobilization of equipment, actually used to perform eligible work, involving transportation less than 300 miles, one way.

(iv) The following types of costs of emergency snow removal are not eligible:

(A) Costs of hand labor.

(B) Costs of salt, sand, and other such antislip measures. These are normal maintenance costs which do not necessarily increase with the depth of the snowfall.

(C) Cost of transportation in excess of 300 miles for one way for mobilization or demobilization of equipment.

(5) Emergency pumping. Reimbursement for emergency pumping shall terminate promptly after the river or stream has crested, except for removal of trapped water posing an immediate threat to public health and safety.

(6) Access to water control facilities. Emergency repairs to roadways along the top of a water control facility shall not exceed that required to provide access for emergency work or that which existed prior to this major disaster or emergency.

(7) Vector control. Only disaster-related actual costs in excess of the average cost for the same period of time during the previous three years are eligible when vector control is approved in the public interest.

(e) *Permanent work.* (1) General. In addition to provisions of 44 CFR 205.76 (a), (b), and (c), these specific criteria apply to permanent work under Section 402 of the Act.

(2) Engineering and design. Reimbursement for eligible engineering, planning, design, supervision, or inspection services is based upon actual direct costs but shall not exceed the amount approved on the project application, or on a supplemental project application. The Regional Director may approve special services, such as engineering, surveys, soil investigations, resident engineers, and additional construction inspection when justified.

(3) Feasibility studies. Feasibility studies may be reimbursable under the Act when approved in advance by the Regional Director. Costs for feasibility studies primarily concerning alternate facilities, betterments, or post-disaster programs or any project approved for flexible funding are not eligible for reimbursement under the provisions of the Act.

(4) Environmental review. Costs incurred by an applicant to perform an environmental review and assessment are not eligible without prior approval by the Regional Director. Refer also to 44 CFR Part 10.

(5) Disaster proofing. The eligible costs of disaster proofing are limited to minor measures to make the affected features of a facility or structure disaster-resistant. Eligible costs of disaster proofing shall not exceed a small percentage of otherwise eligible costs of restorative work being disaster proofed, unless approved by the Associate Director under unusual circumstances on a case-by-case basis.

(6) Relocations. When the Regional Director has approved replacement of a facility at a new location under section 402 of the Act, the costs of acquiring the site plus providing to the site road access, utilities, and communication lines are the owner's responsibility and are not eligible. The costs of replacing the facility at the new approved location, otherwise eligible under the Act, are reimbursable.

(7) Warranties. Additional costs to provide warranty or guarantee of any repaired or replacement items or facilities are not eligible for Federal reimbursement. However, after applying for relief from the contractor, manufacturer, or supplier, the applicant or grantee may appeal to the Regional Director for any grant assistance that he can justify as disaster related.

(8) Projects under construction. (i) Only categorical grants may be approved for those facilities under construction when damaged or destroyed by a major disaster. Federal reimbursement shall not exceed the net eligible costs to the applicant, to a private nonprofit organization or entity, or to the contractors in restoring a facility to substantially the same condition as existed prior to the major disaster.

(ii) In addition to other provisions of 44 CFR 205.76, the following are not eligible:

(A) Repair or replacement of the site.

(B) Repair or replacement of mobile construction equipment.

(C) Project operation and maintenance.

(D) Idle construction equipment ownership expense or loss of revenue because of damages to construction equipment or for other reasons.

(E) Contractors' administrative or overhead costs not directly related to eligible work including computer costs.

(F) Costs covered by insurance settlements or salvage, including reimbursement which might be received from any other private, State or local government, or Federal agency.

(G) Contractor's profit in those instances where the contractor is the beneficiary of the Federal assistance.

(H) Losses resulting from delays in completion of the work such as contract penalties or loss of revenue.

(I) Costs of disaster proofing.

(9) Timber removal. (i) Eligible costs: (A) Reimbursement for eligible expenses actually incurred in the removal of damaged timber subject to verification by inspection and audit.

(B) Costs of repair or construction of temporary roads approved by the Regional Director as necessary for access to damaged timber for removal.

(ii) Ineligible costs: (A) Estimated salvage value of timber destroyed by burning or otherwise by the claimant in lieu of practicable salvage operations.

(B) Costs of timber removal for which the Regional Director determines salvage or insurance recoveries by the claimant are applicable.

(C) Debris removal other than provided in approved work practices for primary purpose of timber removal.

(iii) Maximum Payment: Maximum payment for completed approved work practices will be based on the following:

(A) Construction of approved temporary access roads for salvage of damaged timber. 100% of eligible costs not to exceed $60.00 per thousand linear feet.

(B) Drum chopping: 100% of eligible cost not to exceed $100.00 per acre.

(C) Prescribed burning: 100% of eligible cost not to exceed $5.00 per acre.

(D) Raking, windrowing and burning: 100% of eligible cost not to exceed $140.00 per acre.

Any payment will be minus any residual salvage value, insurance recoveries or other cost-share payments related to timber removal.

(Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42

U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792))

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980; 46 FR 32588, June 24, 1981]

Subpart F—Community Disaster Loans

AUTHORITY: Secs. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792), unless otherwise noted.

SOURCE: 44 FR 71790, Dec. 11, 1980, unless otherwise noted.

§ 205.90 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under Section 414 of the Act.

§ 205.91 Loan program.

(a) *General.* The Associate Director, may make a Community Disaster Loan to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster or emergency and which demonstrates a need for financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the loan (i.e., Promissory Note) is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year, when requested by the local government. Only one loan may be approved for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is three years, unless otherwise approved by the Associate Director. The Associate Director may consider requests for an extension of the term based on the local government's financial condition. The total term of any loan may not exceed 10 years.

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional disaster-related municipal operating expenses.

(h) Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 205.92 Responsibilities.

(a) The local government shall submit the financial information required by FEMA and, if a loan is made, comply with the assurances on the application and the terms of the Promissory Note.

(b) The Governor's Authorized Representative shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the Federal-State Agreement.

(c) The Regional Director shall review each loan application or loan cancellation request received from a local government and monitor the local government's use of the loan. He/She shall inform the Associate Director and submit recommendations when appropriate.

(d) A loan officer, designated by the Associate Director, shall execute a Promissory Note with the local government, establish and maintain a loan account, and administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director, or a person designated by the Associate Director, shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the Governor's Authorized Representative and the Regional Director. The Associate Director, or the Associate Director's designee, shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

§ 205.93 Eligibility criteria.

(a) *local government.* The local government must be located within the area designated by the Associate Director as being eligible for assistance under a major disaster or emergency declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan. Factors considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a disaster, a demonstrated need for financial assistance in order to perform its governmental functions as a political entity, the maintenance of an annual operating budget, and its responsibilities for providing essential municipal operating services to the community. Eligibility for other assistance under the Act does not, of itself, establish entitlement to such a loan.

(b) *Loan eligibility.*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a disaster and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Guidelines include the following disaster-related factors:

(i) A large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster.

(ii) A revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. Guidelines include the following:

(i) Sufficiency of funds to meet current fiscal year operating requirements;

(ii) Availability of cash on other liquid assets which can be applied from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Fixed debt requirements;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 205.94 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the three succeeding fiscal years. This loan request shall be prepared by the affected local government and certified as legal by the Governor's Authorized Representative.

(2) Waiver of state review. The Regional Director may waive the requirement for a State review if an otherwise eligible applicant is not subject to State administrative authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the annual operating budget (§ 205.94(b)(2) of this part) and shall include a Summary of Revenue Loss and Disaster-Related Expenses, a Statement of the Applicant's Operating Results-Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application. Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the three fiscal years prior to the fiscal year of the disaster must accompany the application.

(2) Operating Budget. For purposes of the loan, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment, to include assessment dates and the dates payments are due. Tax revenues assessed but not collected or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) Estimated disaster-related expenses. Disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 205.96(b).

(c) *Federal review.* (1) The Associate Director shall approve a community disaster loan to the extent it is determined that the local government may suffer a substantial loss of tax and other revenues and demonstrate a need for financial assistance needed to perform its governmental function as the result of the disaster.

(2) The loan shall not exceed the lesser of: (i) The amount of projected loss plus the projected disaster-related expenses of a municipal operating character or (ii) 25 percent of the annual operating budget for the fiscal year in which the disaster occurred.

(3) Promissory note. Upon approval of the loan by the Associate Director, FEMA, the Loan Officer will execute a Promissory Note with the applicant. The applicant should indicate its funding requirements on the Schedule of Loan Increments.

§ 205.95 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments. As funds are disbursed, interest will accrue.

(2) When each incremental payment is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in consultation with the borrower of whether or not the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections for the most recent period. Desired adjustments in the disbursement schedule shall be

submitted in writing at least 30 days prior to the proposed disbursement date in order to ensure timely receipts of the funds.

(b) *Financial management.* Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with the local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(c) *Loan Servicing.* Whether or not all loan funds have been drawn, FEMA will reevaluate the total loan justification periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed significantly to warrant adjustment of the scheduled payments of the loan proceeds.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the major disaster.

§ 205.96 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full 3 fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operating character.

(2) If the local government reduces the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster or emergency shall be used without reduction for purposes of computing revenues received. This may result in decreasing the amount of any potential loan cancellations as a result of a general reduction in property tax.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, expenses of a municipal operation character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and those other expenses normally budgeted for in special revenue, enterprise, and general funds, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation prior to the expiration date of the loan through the Governor's Authorized Representative to the Regional Director.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for each fiscal year;

(ii) Financial Records (Revenue and Expense and Balance Sheet) for each fiscal year;

(iii) Audit reports for each fiscal year certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants licensed on or before December 31, 1970, who are certified by a regulatory authority of a State or other political subdivision of the United States. As required by the American Institute of Certified Public Accountants standards, or the equivalent thereof, the auditor must be independent within the meaning of the code of professional ethics of the AICPA; and

(iv) Other financial information specified in the Application for Loan Cancellation.

(2) Narrative justification. The applicant may include an appropriate narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants to be considered.

(3) Audit report. The audit report accompanying the application shall certify to the fiscal integrity of financial transactions and reports and to compliance with applicable laws, regulations, and administrative requirements. The report should not include recommendations concerning cancellation or repayment.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and a State and/or Federal audit, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant and the related interest will be forgiven.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 205.97 of this part.

§ 205.97 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against the loan at any time.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the promissory note. The note shall include the following provisions:

(1) The term of a loan made under this program is three years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(3) The Associate Director may defer payments of principal and interest until he makes his final determination with respect to any application for loan cancellation which the borrower may submit.

(4) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand. Default on the note shall also constitute default under any other debit of the Borrower owing to, or insured by, the Federal Government. Upon any such default, the Federal Government may declare all or part of the note immediately due.

(42 U.S.C. 5184)

Subpart G—Fire Suppression Assistance

AUTHORITY: Sec. 601 and 417, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5201 and 5187); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

SOURCE: 44 FR 71793, Dec. 11, 1979, unless otherwise noted.

§ 205.100 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, he/she may authorize assistance, including grants, equipment, supplies, and personnel to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 205.101 Federal-State agreements.

Federal assistance under section 417 of the Act is provided in accordance with a continuing Federal-State Agreement for Fire Suppression (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed at least annually in advance of the fire season to update the continuing Agreement.

§ 205.102 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, his/her request for assistance shall specify in detail the facts supporting the request. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a request to the Regional Director by telephone, promptly followed by a confirming telegram or letter.

§ 205.103 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal fire-fighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application and submit it to the Regional Director for approval.

§ 205.104 Reimbursement.

(a) Payment is made to the State for its actual eligible costs, subject to verification, as necessary, by Federal inspection and audit. When requested by the State, such payments may be made directly to other Federal agencies for eligible assistance provided by them.

(b) Eligible State costs are reimbursed in accordance with the terms and provisions of the Agreement. Only certain costs incurred in fire suppression operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible.

(1) Eligible costs of the State consist of the following costs reasonably and directly related to fire suppression:

(i) All compensation for employees, except as noted under paragraph (b)(2)(i) of this section, directly engaged in authorized fire suppression activities. Included are field support personnel, such as cooks, guards, timekeepers, and supply personnel.

(ii) Travel and per diem costs for employees directly engaged in fire suppression activities.

(iii) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(iv) Cost for use of publicly-owned equipment used on eligible fire suppression work is based on the FEMA Schedule of Equipment Rates.

(v) Cost for use of privately-owned equipment is based on the rental rate: *Provided*, Such costs are comparable to the going rate for the same or similar equipment in the locality, as determined by the Regional Director.

(vi) Cost to the State for use of U.S. Government-owned equipment is based on reasonable costs as billed by the Federal agency and paid by the State.

(vii) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(viii) Repair and reconditioning costs of tools and equipment used in eligible fire suppression activities (other than equipment covered by the FEMA Schedule of Equipment Rates).

(ix) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(x) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(xi) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(xii) Eligible costs of local governmental fire-fighting organizations reimbursed by the State, pursuant to an existing cooperative agreement, in suppressing an approved incident fire.

(xiii) State costs for suppressing fires on Federal land in cases where the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis.

(2) Costs which are ineligible for reimbursement are:

(i) Any clerical or overhead costs other than field administration and supervision.

(ii) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(iii) Any costs not incurred during the incidence period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(iv) State costs for suppressing a fire on Federal land where such costs are reimbursable to the State by another Federal agency under another statute.

(3) In those instances in which assistance under section 417 of the Act is provided pursuant to existing Interstate Forest Fire Protection Compacts, third party eligible costs are reimbursed in accordance with paragraph (b) of this section.

Subpart H—Project Administration

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201) Executive Order 12148 (44 FR 43239); and Delegation of Authority.

SOURCE: 45 FR 45863, July 7, 1980, unless otherwise noted.

§ 205.110 General.

This subpart provides guidance for administration of Federal assistance for State and local governments, and qualifying private nonprofit institutions under Pub. L. 93-288, as amended. The basic policies and procedures are provided for (a) Federal grants to eligible applicants, including the notice of interest, damage survey report, project application, advance of funds, inspection, audit, and final payment; and (b) direct Federal assistance by a Federal agency as the result of a mission assignment. The requirements of OMB Circular A-102, Revised, are applicable and have been incorporated either directly or by appropriate cross reference.

§ 205.111 Definitions.

(a) "Advance of funds" means a sum of money provided to a State, local government, or other Federal agency prior to audit and or final settlement of its claim.

(b) "Applicant" means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action.

(c) [Reserved]

(d) "Bid guarantee" means a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(e) "Bill for collection" means a request issued to an applicant by FEMA to collect excess funds that were overadvanced or paid in error to the applicant.

(f) "Damage Survey Report (DSR)" means a report of damages or requirements caused by a major disaster or emergency including location, description and estimate of required work.

(g) "Emergency work" means that work which must be done immediately to save lives and to protect property and public health and safety, or to avert or lessen the threat of a major disaster.

(h) "FEMA" means the Federal Emergency Management Agency.

(i) "Force account" means an applicant's own labor forces consisting of its regular and extra employees.

(j) "Line item" means a DSR under one category of work attached to a project application.

(k) "Notice of Interest" means an identification of each potential applicant and the categories of disaster requirements each has identified which may be eligible for Federal disaster assistance.

(l) "Offset" means a collection procedure whereby FEMA withholds funds due an applicant or the State in an amount to satisfy an uncollectible debt owed by the applicant on a Bill for collection.

(m) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(n) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(o) "Permanent work" means the restorative work that must be done, through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and in conformity with current applicable codes, specifications, and standards.

(p) "Public assistance" means the Federal financial assistance provided to State and local governments or to eligible private nonprofit organizations for disaster-related requirements.

(q) "Standards" means codes, specifications, and standards which were in general use and locally enforced at the time of the major disaster, plus those additional standards authorized as deviations or prescribed by the Associate Director in accordance with these regulations.

[45 FR 45863, July 7, 1980, as amended at 46 FR 45138, Sept. 10, 1981]

§ 205.112 Implementation of OMB Circular A-102 (Rev.).

(a) [Reserved]

(b) *Bonding and insurance.* A state or local unit of government receiving a grant under the Act for construction or facility improvement which requires contracting shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the Regional Director may accept the bonding policy and requirements of the grantee provided that the Regional Director has made a determination that the Government's interest is adequately protected. If such determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price.

(2) A performance bond on the part of the contractor for 100 percent of the contract price.

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

(c) *Property management standards.* Uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments are applicable as stated in Attachment N, OMB Circular A-102, Revised.

(d) *Procurement standards.* State and local governments are required to apply uniform standards, as stated in Attachment O, OMB Circular A-102 Revised, in establishing procedures for the procurement of supplies, equipment, construction, and other services with Pub. L. 93-288 grant funds. Additionally, the following standards are required:

(1) State and local statutes: The State, local government, or other organization issuing a contract shall assure that procurement of work and services authorized under project applications complies with provisions of the Act, and, unless waived by the Governor's proclamation of an emergency, with State or local statutes, regulations, and ordinances not in conflict with Federal policies or procedures.

(2) Contingent payment: Contracts entered into by an applicant under the Act or the regulations will not contain a provision which makes the payment for such work contingent upon reimbursement under this Act.

(3) The cost-plus-percentage-of-cost and percentage-of construction-cost method of contracting shall not be used. Any CPPC contracts entered into by applicants in violation of this prohibition will be reviewed carefully by the Regional Director or his designee and rejected or reimbursed on a reasonable cost basis at his discretion, depending on the policy considerations involved in the particular case.

(4) Competitive bidding: Contracting for construction work shall be based on competitive bids wherever possible. Any negotiations shall be in accordance with Attachment O, OMB Circular A-102, Revised.

(5) Debarred contractors: The applicant may not enter into any contract with parties whose names appear on the FEMA Consolidated List of Debarred, Suspended and Ineligible Contractors. The Regional Director may retroactively approve the use of debarred contractors already under contract on a case-by-case basis if he determines such approval to be in the public interest.

(6) Use of local firms and individuals: In the expenditure of funds for eligible disaster assistance activity which may be carried out by contract with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals who reside or do business primarily in the area affected by such major disaster. Contracting procedures should be designed to give local contractors the opportunity to participate in maximum free and open competition with other contractors. Local preference should be mentioned in the invitations for bids and requests for proposals and also included in the provisions of the contract. Contracting officers may assure the use of local firms and individuals in various ways, such as:

(i) Advertising in the local disaster area.

(ii) Including local contractors in negotiations.

(iii) Subdividing some large contracts down into smaller sized contracts.

(iv) Stressing that a contractor shall give first priority to utilizing resources in the disaster area when procuring supplies and equipment, awarding subcontracts, and employing workmen.

(v) When it is necessary for competitive negotiation, the applicant may permit a local contractor to revise his proposal to meet a lower offering received from a non-local contractor if the original proposal from the local contractor does not exceed 130 percent of the lower non-local proposal.

(vi) When a low bid is received from a non-local contractor under competitive bidding procedures, the applicant may offer a local contractor the opportunity of accepting the work at the low bid amount, provided that the original bid from the local contractor does not exceed 130 percent of the low bid, and a "local preference" clause was included in the bid advertisement.

(e) Audit requirements, as stated in OMB Circular A-102, Attachment P, are applicable to grants to eligible applicants and other grantees, as implemented by appropriate FEMA regulations and handbooks.

§ 205.113 Federal grant assistance.

(a) *General.* Federal grant assistance is provided on the basis of a project application submitted by or on behalf of an applicant and approved by the Governor's Authorized Representative and the Regional Director. When the Regional Director approves a project application, Federal funds are obligated and the approval is final unless appealed in accordance with 44 CFR 205.120. When assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations, an Indian tribe or authorized tribal organization acting as a local government may submit a project application directly to the Regional Director who may provide Federal assistance to such applicant without State participation.

(b) *Types of Federal grants*—(1) *Categorical grant.* (i) The terms of this type of grant require that the work shall be performed as approved in the project application,

(ii) It shall be used in all cases for:

(A) Facilities under construction; and

(B) Private nonprofit facilities.

(iii) Reimbursement to the applicant under categorical funding except grant-in-lieu is limited to the actual reasonable cost of performing work approved by the Regional Director as eligible under the Act. It shall not exceed the net eligible cost of restoring a facility, based on the predisaster design of such facility and on the current applicable standards.

(iv) Grant-in-lieu: If a grantee desires to construct a larger or more elaborate facility it may apply for a grant, known as a grant-in-lieu, equal to that approved for repair or replacement of the damaged facility in accordance with these regulations. Such replacement facility may be of a design, size or type, or composed of materials significantly different from those of the eligible damaged facility. A grant-in-lieu is available only under a categorical grant.

(A) A separate request is submitted for each grant-in-lieu based on a separate Damage Survey Report.

(B) The Regional Director's conditions of approval are stated separately for each grant-in-lieu.

(2) *Flexible funding grant (Sec. 402(f) of the Act)*. (i) If the estimated cost of permanently repairing, restoring, reconstructing, or replacing all of its damaged public facilities exceeds $25,000, an applicant may elect to receive a grant equal to 90 percent of the Federal estimate of such permanent work instead of a categorical grant. This election allows flexibility in the use of the Federal grant. When an applicant determines that restoration of certain disaster-damaged facilities would not be in the public interest, it may choose not to restore those facilities, but to build new public facilities for other purposes. The applicant shall determine that any new facilities constructed are necessary to meet its needs for governmental services and functions in the disaster-affected area. Construction of all federally assisted facilities, including any new or modified construction projects on the applicant's listing of flexibly funded projects, shall be in conformity with current applicable Federal, State, and local standards, including requirements imposed by floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(ii) The applicant shall declare the election of flexible funding, through the Governor's Authorized Representative, to the Regional Director before the project application is approved.

(iii) A request by the applicant for a change in the type of funding after the project application has been approved shall be referred by the Regional Director with his/her recommendations, to the Associate Director for decision.

(iv) Within 90 days after the date of the Regional Director's approval of the project application, and prior to the start of design or construction of any alternate project, the applicant shall furnish a listing of the public facilities to be repaired, restored, or constructed with the flexible funding grant; the estimated cost of each; and a proposed schedule of initiation and completion, including estimated quarterly fund requirements. The listing shall provide necessary assurances that reflect applicant's compliance with special requirements, including, but not limited to, floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance. The listing shall also itemize those disaster-damaged public facilities that are not being restored.

(v) Promptly after the completion of all work for which FEMA reimbursement is requested, the applicant shall submit to the Regional Director through the State, an updated listing of completed work. This listing shall contain a description of each completed project and a certification by the Applicant's Authorized Representative of the actual cost of each project involved.

(3) *Small-project grant (Sec. 419 of the Act)*. (i) In any case in which the Federal estimate of an applicant's eligible costs for restoration under section 402 of the Act of damaged or destroyed facilities owned by the applicant, and debris removal and emergency protective work under sections 403 and 306 of the Act, respectively, total less than $25,000, the Regional Director may approve the applicant's project application for a small-project grant. This approval is in lieu of approval by the Regional Director of any other grant under section 306, 402, or 403 of the Act.

(ii) The grant approved by the Regional Director is based on 100 percent of the estimated eligible costs. Funds approved for debris removal or emergency protective work must be expended for that approved work. Funds approved for permanent restorative work may be expended (A) to perform all approved projects on the Damage Survey Reports or (B) to perform certain of these approved projects, and with the balance of the approved grant to construct certain other public facilities which the applicant determines to be necessary to meet the community's needs for public services and governmental functions in the disaster-affected area. Proposed alternate projects must be approved by the Regional Director prior to the start of design or construction.

(iii) This type of grant may not be approved for private nonprofit facilities under section 402(b) of the Act.

(iv) Upon approval of a project application, the Regional Director furnishes the applicant, through the State, with a listing of approved projects. This listing includes a description and approved estimate of cost for each project.

(v) One hundred percent grant to the applicant follows as soon as possible after the Regional Director's approval of the project application.

(vi) Within 30 days following completion of all work performed under a small project grant, the applicant shall complete the above listing by showing the cost of the completed projects, including any alternate projects substituted for those originally approved. This listing shall also include the applicant's certification that all work listed is completed and that all funds were expended in accordance with the purposes of section 419 of the Act, and these regulations, including compliance with special requirements including but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(vii) The only permissible basis for increasing Federal funding in a small project grant is a substantive error or omission in defining the approved scope of work or in the approved estimated reasonable costs of such work. Federal funding may be reduced where the applicant fails to comply with applicable laws or FEMA regulations and procedures, including noncompliance with assurances, illegal contracting methods, duplication of benefits and nonconformity with applicable standards. If a supplement to a project application is warranted, and it would increase the small project grant to an amount exceeding $25,000, the entire grant shall revert to a categorical grant or a flexible funding grant, as approved by the Regional Director.

(viii) Any remaining balance of such grant not expended by the applicant shall be returned to FEMA.

§ 205.114 Project applications.

(a) *General.* This section describes the basic policies and procedures for processing project applications. The Governor's Authorized Representative is responsible for providing technical advice and assistance when required by an applicant in order to obtain eligible Federal grant assistance. All project applications, advances of funds, claims, appeals, payments, refunds, and other related correspondence between a local government or other applicant and the Regional Director, shall be forwarded through the office of the Governor's Authorized Representative for that official's review and appropriate action. This applies to all applicants for public assistance unless otherwise stated. (Refer also to 44 CFR 205.113(a))

(b) *Applicants' briefing.* As soon as possible following the President's declaration of an emergency or a major disaster, the Regional Director and the Governor's Authorized Representative jointly schedule and conduct meetings for all potential applicants for public assistance. Requirements and procedures for requesting and obtaining available public assistance are explained at these meetings. Applicants are furnished informative material, including handbooks and a fact sheet.

(c) *Notice of Interest.* Each applicant submits a Notice of Interest which provides the basis for scheduling the damage surveys.

(d) *Damage Survey Reports.* Damage surveys are usually conducted by a Federal-State inspection team. An authorized local representative accompanies the Federal/State inspection team and is responsible for representing the applicant and assuring that all damage and needs for assistance are inspected. The inspectors record pertinent information on a Damage Survey Report, including a description of the damage, proposed repairs or replacement, and the inspectors' best estimate of the cost of the recommended work.

(e) *Project applications.* Project applications for Federal funding are prepared for the signature of the applicant's authorized agent and submitted through the Governor's Authorized Representative to the Regional Director for approval. The scope of work and amount of funding requested in the project application are based on Damage Survey Reports, plus such additional documentation as the Regional Director considers necessary. In applying for assistance, the applicant certifies to certain assurances which are part of the project application. (See 44 CFR 205.114(h).)

(1) *Time limitations for submittal.* Project applications and supplements for all projects requested by each applicant shall be submitted as promptly as possible within 90 days after a declaration of a major disaster or within 30 days after declaration of an emergency, or lesser time periods as specified by the Regional Director. When circumstances beyond the applicant's control warrant such action, the Regional Director may at the State's request extend these time limitations. Supplements that cover new work are subject to same time limitations as project applications. Changes in scope of work or increases in estimates of eligible costs for projects previously approved shall be reported to the Governor's Authorized Representative immediately upon determination by the applicant that such changes are necessary. The related supplements shall be submitted as soon as possible thereafter.

(2) *Funding option.* When the total estimated costs requested in the project application exceed $25,000, the applicant has a choice of the type of funding that best suits its needs, either a categorical or flexible funding grant. (See § 205.113 (b) (1) and (2).) This choice is made on the project application by the applicant. If the applicant chooses flexible funding, then the basic project application shall include only debris clearance, emergency protective measures, and other eligible emergency work and shall be handled as a categorical grant. Permanent work that is otherwise eligible for flexible funding assistance will be included in a supplement(s) to the basic project application.

(f) *Advances of funds.* (1) Final settlement does not occur until the applicant completes all approved work for which a claim is made and pays all related bills. At the applicant's request, funds may be advanced to meet the current obligations for eligible work and those anticipated for the next 60 days. An advance does not constitute final approval by FEMA of a grant; advances are discretionary and are designed to the convenience of the applicant. Further advances of funds may be made as necessary; however, the total of advanced funds may not exceed the percentage agreed upon by the Regional Director and the Governor's Authorized Representative. The advance of funds is based on a project application approved either as a categorical or flexible funding grant. The applicant may request an advance of funds at the time its project application is submitted or after the project application is approved, depending upon the applicant's need.

(2) States, as well as applicants for categorical or flexible funding grants, shall adopt procedures which minimize the time elapsing between the transfer of funds from the United States Treasury to the State or grantee and their subsequent disbursement by the grantee for authorized program purposes.

(g) *Supplemental project applications.* Supplemental project applications under a categorical grant may be submitted by or on behalf of an applicant for new or additionl work, or for other increases in funding found to be necessary after the basic project application was submitted.

(h) *State review and approval.* The Governor's Authorized Representative(s) shall review all project applications and supplemental project applications and shall recommend approval or disapproval. As a condition for FEMA approval, the State and the applicant shall provide the assurances on the reverse side of the standard form used for submitting project applications to FEMA. Any grantee or recipient of such FEMA funding other than the State or the applicant shall also provide these assurances plus such other assurances as may be required by these regulations or by the Regional Director.

(i) *Regional Director's review and approval.* The Regional Director reviews the project application and supplemental project applications for eligibility of work, reasonableness of costs, and other considerations. He/she then notifies the applicant through the Governor's Authorized Representative of the approval or disapproval, and conditions, if any. Funds are obligated upon the Regional Director's approval, and advances may be made any time after obligation of funds. In the case of a small-project grant, final reimbursement is made when the Regional Director approves the project application.

§ 205.115 Documentation.

All recipients of Federal grants must maintain adequate disbursement and accounting records of the costs incurred on approved disaster work so that the documentation required by State or Federal audit can be made available. The requirement for auditable records applies to categorical, flexible funding, and small-project grants. Original or source documents must be available for audit purposes, and documentation must be available to auditors at one central office of record. These accounting records and documentation must be kept by the applicant for three years from date of final settlement of claim.

§ 205.116 Project performance.

(a) The primary responsibility for managing the approved projects rests with the applicant.

(1) *Force account.* Eligible work may be performed under force account. The applicant may use its own equipment or other publicly owned equipment. The applicant may rent privately-owned equipment to perform eligible disaster-related work. Each applicant using force account shall maintain adequate, auditable records for each line item of eligible work.

(2) Contract: Eligible work may be performed partially or totally by contract.

(b) *Time limitations for completion of work*—(1) *Emergencies.* Federal emergency assistance shall terminate no later than one month after the determination that an emergency exists, except:

(i) Based on extenuating circumstances beyond the control of the applicant, the Regional Director may extend the time limitation not to exceed an additional two months.

(ii) Based on a determination that such action is warranted, the Associate Director may extend the time limitation completion date beyond three months when requested to do so by the State.

(2) *Major disasters.* (i) Federal assistance shall begin with the start of the incident period under the President's declaration of a major disaster as established in the Federal-State Agreement and, except for the situation described in paragraph (b)(2)(ii) of this section, shall terminate upon expiration of these prescribed deadlines:[1]

COMPLETION [2] DEADLINES

	Months
(A) Debris clearance	6
(B) Emergency work	6
(C) Permanent work	18

[2] These time limitations apply to categorical grants and to grants involving flexible funding under sections 402(f) and 419 of the Act. The Regional Director may require an applicant to submit a completion schedule through the State for his approval.

(ii) *Exceptions.* (A) Based on extenuating circumstances or unusual project requirements beyond the control of the grantee, the Regional Director may extend the deadlines under § 205.116(b)(2)(i) (A) and (B) for a period not to exceed six months and under (C) for a period not to exceed one year, on a project-by-project basis.

---

[1] The Regional Director may also impose deadlines under this subparagraph for initiation of work.

(B) Based on a determination that such action is warranted, the Associate Director may extend any of the deadlines prescribed by this action.

(iii) The Regional Director may impose lesser deadlines for completion of work under paragraph (b)(2)(i) of this if considered appropriate.

(iv) When an applicant fails to make a timely start of work approved under the Act, the Regional Director shall review the project approval and may suspend or withdraw his approval of Federal funding.

(c) *Progress reports.* For any permanent projects that the applicant does not expect to complete within 18 months from the date of the disaster declaration, the applicant shall submit work schedules with the application or supplement for approval by the Governor's Authorized Representative and by the Regional Director. When required by the Regional Director or the Governor's Authorized Representative, the applicant shall provide the Governor's Authorized Representative with periodic progress reports of scheduled work, outlining any problems and unforeseen circumstances that are expected to result in a slippage in the schedule. The Governor's Authorized Representative may use such reports to take action to eliminate the causes of delays and to identify projects that may require time extensions. The Governor's Authorized Representative shall provide the Regional Director with copies of these progress reports together with comments and a report of actions taken. Any changes in approved schedules must be justified by the applicant and approved by the Governor's Authorized Representative and by the Regional Director.

(d) *Requests for time extensions.* If an applicant finds that an approved project cannot be completed within the time limit prescribed by the Regional Director, the applicant shall forward promptly to the State a request in writing for additional time, together with justification for delay in completion of the project. The Governor's Authorized Representative shall forward the request with a recommendation to the Regional Director. The Regional Director shall notify the applicant, through the State, of approval or denial. Requests for time extensions beyond the Regional Director's authority are forwarded by the Regional Director to the Associate Director for his action.

(e) *Cost overruns.* During the execution of approved work under categorical grants, the applicant may find that overruns are occurring on the actual costs of certain projects, compared to the approved estimates on the Damage Survey Reports. Such cost overruns fall into two main categories: (1) Overruns because of variations in unit prices and (2) overruns because of change in scope of eligible work. The applicant should report these situations to the Governor's Authorized Representative immediately so that appropriate actions can be taken to verify eligibility of the overruns. An interim inspection by a Federal inspector may be necessary. Upon verification of eligibility documented by amended Damage Survey Reports, a supplemental project application to cover the overrun may be submitted.

§ 205.117 Final inspections.

(a) For any categorical grant, flexible funding grant, or small project grant, the Regional Director or the Associate Director, may require such Federal or State inspections, not otherwise required by these regulations, as he/she deems necessary.

(b) The following requirements for Federal final inspection are applicable to categorical grants and to flexible funding grants:

(1) For any project of completed work for which the claimed amount of FEMA reimbursement exceeds $10,000, a Federal final inspection is required.

(2) For any project of completed work for which the claimed amount of FEMA reimbursement does not exceed $10,000, the Regional Director may accept a written certification by the applicant's Authorized Representative, describing the project and certifying the claimed actual costs in sufficient detail to permit a desk review by the Governor's Authorized Representative and by the Regional Director. The Regional Director will notify the State

whether the applicant's certification was satisfactory. For those projects not adequately certified, the Regional Director shall require a State or Federal final inspection.

(c) Reference 44 CFR 205.113(b)(3)(vi), the Regional Director shall require a State or Federal final inspection of any project of work completed under a small project grant as he/she deems necessary.

(d) The Governor's Authorized Representative shall arrange for and schedule final inspections, and interim inspections, which he/she deems necessary, and those additional inspections required by the Regional Director. The Governor's Authorized Representative shall assure that all of these inspections are conducted and completed effectively and in a timely manner.

§ 205.118 Claims for reimbursement.

(a) *Submittal.* To receive reimbursement for funds expended under a categorical grant or flexible funding grant, the applicant shall submit a claim to the State within 60 days after the completion of approved work, including a listing of actual costs for each line item. All costs claimed shall be paid by the applicant prior to approval of final settlement by the Regional Director. Under a small project grant, the applicant shall submit a request for reimbursement with the project application. If the applicant completes all work approved for it under a categorical grant for an amount less than $25,000, the Regional Director may, at his/her discretion, approve a change in funding to a small project grant, and reduce the amount originally approved to the amount of the actual cost of the approved work.

(b) *Audit.* (1) Reference 44 CFR 205.112(e), the Governor's Authorized Representative shall arrange for State audit to be made for each categorical or flexible funding grant as soon as possible after receiving the applicant's claim. Audit of small project grants is not normally required. Documentation must be available to auditors at the grantee's central office of record. The Regional Director or the Associate Director may request a Federal audit of any claim, regardless of amount or type of funding.

(2) The FEMA or State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audit and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.

(3) Federal audit: The FEMA Inspector General and the General Accounting Office have audit responsibility. Thus, a Federal audit may be performed on any claim if deemed necessary by the FEMA Inspector General and/or the General Accounting Office.

(c) *Partial payments.* In any case where an applicant has completed part of the approved work, has received the maximum advance of funds available, and still lacks funds to satisfy all project-related obligations, the Regional Director may approve partial payments. The basis for approval of such payments are urgent financial need, satisfactory inspection reports, and audit of the applicant's records upon which the partial payment is based.

(d) *Review and approval*—(1) *State.* Following audit, the Governor's Authorized Representative reviews the claim and, based on the audit report and related documents, approves a certain amount on the claim to be submitted to the Regional Director for approval. The State shall submit the claim and the audit report to the Regional Director as soon as possible after the date that the applicant submitted the claim to the Governor's Authorized Representative.

(2) *Regional Director.* Following his/her review of the claim and audit report, the Regional Director may approve or disapprove it. An approved claim will then be processed for payment. If the Regional Director does not agree with the State audit recommendations, he/she may request a Federal audit. If he/she does not agree with the Federal audit recommendations and the matter cannot be resolved at the Regional level, the case is forwarded to the Associate Director

for resolution. The Regional Director or the Associate Director may require additional Federal audits as he/she deems necessary.

§ 205.119 Federal funding.

(a) *Management of Federal funds.* The State shall properly account for all Federal funds made available to the State under these regulations as Federal funds in the accounts of the State. In each case, the State agency concerned shall provide such authenticated reports as the Associate Director or the Regional Director may require, covering the status and application of the funds, the liabilities and obligations on hand, and other pertinent information.

(b) *Release of Federal funds for State or local governments.* Requests for advance of funds or reimbursement that are approved by the Regional Director are forwarded to the FEMA National Office, where they are processed to the U.S. Treasury for payment.

(c) *Recovery of excess advances from State or local governments.* (1) A bill for collection will be issued to the State immediately upon verification that the applicant has received funds in excess of the amount approved by the Regional Director as final settlement of its claim. In the event that there is an appeal by the applicant pending, the bill for collection may not be issued until the appeal is settled by the Regional Director or the Associate Director. The States shall advise applicants that the bills for collection are due upon receipt and that any appeals of the bills must be filed with the Regional Director within 60 days, the time limit established in 44 CFR 205.120.

(2) If by the expiration of the period for appeals the Regional Director has not received payment for the full amount of the bill for collection, he/she shall notify the appropriate State official in writing for transmittal to the applicant that the amount owed is past due, and that the claim is being referred to the Claims Collection Officer for further action. This action may include offset against future claims for disaster relief from the applicant or the State.

(d) *Disposition of interest earned on advances for funds.* (1) From the time that the State disburses advances of Federal funds to local applicants or to applicant State agencies, any interest earned on those funds must be paid to the Federal Government.

(2) If an applicant incurs disaster-related obligations, discharges those obligations with its own funds, and uses the advanced funds to reimburse its own accounts, the applicant does not have to remit any interest earned to the Federal Government.

(3) States do not have to remit interest earned on advanced funds that are held briefly pending disbursement for immediate program purposes, i.e., to advance to eligible applicants for their disaster-related expenses.

(e) *Return of overadvanced funds by other Federal agencies.* Other Federal agencies shall promptly return to FEMA any advances of funds which are excess to their requirements in carrying out assignments made to them by FEMA.

§ 205.120 Appeals.

(a) An applicant may request the Governor's Authorized Representative to submit an appeal to the Regional Director for reconsideration of any determinations that the Regional Director made related to Federal assistance for that applicant. The applicant's written request shall be made within 60 days of the date of the Regional Director's action that is being appealed and shall include such additional information as appropriate justification. However, in the event that the additional information is not immediately available, the applicant shall within the 60-day period notify the State in writing of its intention to appeal, and shall then follow up with the required documentation.

(b) The State shall forward such appeals within 30 days of receipt of the appeal from the applicant, together with the State's comments, recommendations, and any additional information it may have.

(c) Upon receipt of an appeal, the Regional Director shall review the material submitted and make such additional investigation as he/she deems appropriate. Following the review and investigation, the Regional Director shall notify the State, in writing, of his/her decision to grant or deny the appeal. If the decision is to grant the appeal, the Regional Director shall take such additional action as is necessary to implement his/her decision.

(d) If the Regional Director denies the appeal, the applicant may request the State to submit a second appeal to the Associate Director. Such appeal shall be made in writing through the Regional Director, and shall be submitted not later than 60 days after receipt of notice of the Regional Director's denial of the appeal. Action by the Associate Director is final.

(e) If an applicant requests the State to make an appeal to the Regional Director or to the Associate Director in accordance with this section and the State declines, or takes no action on the request, the applicant may make an appeal directly to the Regional Director. The appeal by the applicant shall be made in writing within 60 days after receipt from the State of the notice of determination by the Regional Director, or notification by the State, that it will not make an appeal.

(f) Based on his/her determination that such action is warranted, the Associate Director or the Regional Director may extend any of the time periods prescribed by this section.

§ 205.121 Direct Federal assistance.

(a) Neither eligible emergency work, nor eligible permanent work under the provisions of section 402 of the Act, may be performed by or under the direct supervision of a Federal agency except in certain circumstances. When in rare cases the State or local government lacks the capability to perform or to contract for the eligible work, the applicant may request that the work be accomplished by a Federal agency. However, it is not anticipated that mission assignments to other Federal agencies can very often be justified. Such assistance is subject to eligibility criteria for proposed work contained in Subpart E—Public Assistance—of these regulations. Details concerning reimbursement of other Federal agencies are contained in Subpart I.

(b) Requests by Applicants: (1) The applicant shall submit requests for direct Federal assistance through the Governor's Authorized Representative for the Regional Director's approval.

(2) Requests must be made within 10 days after a major disaster declaration, or an emergency declaration, unless that period is specifically extended or shortened by the Regional Director.

(3) Time limitation for completion of emergency work or debris removal by a Federal agency under a mission assignment is three months after President's declaration. The applicant or State must be prepared to take over any emergency work not completed by the Federal agency within the three month period.

(4) The request shall be in the form of a resolution by the governing body of an eligible applicant, and shall include its agreement to:

(i) Provide without cost to the United States all lands, easements, and rights-of-way necessary to the accomplishment of the approved work; and

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work.

(5) The request shall be accompanied by:

(i) A statement of the reasons why the emergency work cannot be performed by the applicant, or by any other local government; and

(ii) Assurance by the applicant of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (42 U.S.C. 2000d-2000d-4), and Section 311, Pub. L. 93-288.

(c) Request by Governor's Authorized Representative: (1) In those instances where the required resolution by each applicant cannot be obtained on a timely basis to meet immediate needs, the Governor's Authorized Representative may submit a State request for direct Federal assistance for the Regional Director's approval.

(2) The FEMA policy in providing direct Federal assistance in response to a State request is that the immediate requirements for such debris removal or emergency work must clearly

exceed State and local capabilities for timely accomplishment and is available only for major disasters of unusual magnitude or severity. Whenever feasible, it is expected the responsible State or local government shall develop the necessary capabilities to perform any remaining eligible work within ten days after the Presidential declaration, or that each unable to do so shall submit an appropriate resolution for continuation of direct Federal assistance. The Regional Director shall terminate direct Federal assistance in response to the State request on the tenth day after the Presidential declaration, except for any extension justified by an appropriate resolution from an applicant on a case-by-case basis. Whenever feasible, technical advice or assistance shall be provided to an applicant to eliminate any requirement for direct Federal assistance. It is also expected that the capabilities of the State or other local governments shall be fully committed before any direct Federal assistance is authorized.

(3) Such State requests must be submitted within two days after the date of declaration of a major disaster or emergency and shall have a time limitation which expires ten days after the date of declaration. During this period, the interested applicants shall submit an appropriate request through the Governor's Authorized Representative in accordance with § 205.121(b) of this part. The Regional Director's approval must be obtained before the expiration of the tenth day after the declaration for the desired Federal assistance to continue.

(4) The Federal agency performing direct Federal assistance in response to a State request shall contact the applicant's authorized representative of each applicant designated specifically by the Regional Director in coordination with the Governor's Authorized Representative. Before any Federal assistance is provided, the applicant's authorized representative shall request the Federal agency to perform the desired work, confirming each verbal request in writing without delay. No direct Federal assistance shall be performed without such prior request.

(5) The State request shall include its agreement to:

(i) Provide without cost to the United States all lands, easements, and rights-of-way necessary to the accomplishment of the approved work; and

(ii) Hold and save the United States free from damages due to the requested work, and indemnify the Federal government against any claims arising from such work.

(6) The request shall be accompanied by:

(i) A statement of the reasons why the emergency work cannot be performed by a local government or by the State; and

(ii) Assurances by the State of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241.

(7) Emergency work on debris removal by direct Federal assistance in response to such a State request shall be performed on publicly-owned property. Under exceptional circumstances when in the public interest, and based on written assurances of right-of-entry and indemnification provided by the State, the local government, or the owner, such direct Federal assistance may be performed on private property.

(d) Approval: (1) State. If the Governor's Authorized Representative concurs that the emergency work is necessary and cannot be accomplished by the applicant, by another local government, or by the State, he/she shall endorse the applicant's request for direct Federal assistance and forward it to the Regional Director, together with a statement of the reasons why the State cannot provide the requested assistance.

(2) Regional Director:

(i) If the Regional Director approves the request, he/she shall issue a mission assignment to the appropriate Federal agency. The assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, except under unusual circumstances approved by the Regional Director, the Federal agency shall submit a Damage Survey Report to the Regional Director for review and approval to establish the scope of eligible work and approved cost limitations. The Federal agency shall not exceed the limit on funding approved by the Regional Director without obtaining prior approval of supplemental funding.

(ii) If all or any part of the requested work falls within another Federal agency's statutory authorities and capabilities, the Regional Director shall not approve it. Instead, he/she shall refer the request to the other Federal agency for action.

(d) Project management: (1) Federal agency responsibilities. The performing Federal agency shall ensure that the work is performed and completed in accordance with the Regional Director's approved scope of work, costs, time limitations, and applicable standards. The performing Federal agency shall also keep the Reginal Director, the Governor's Authorized Representative, and the applicant advised of work progress and other developments. The Federal agency is also responsible for obtaining any necessary permits or licenses; for compliance with applicable State and local laws or other requirements; and for compliance with these regulations and other applicable handbooks or guidance by the Regional Director. The Federal agency shall also provide a final inspection report signifying completion of the approved work which has been signed by the Federal agency's inspector and the applicant's authorized agent.

(2) Applicant responsibilities. The applicant shall assist the performing Federal agency in all support and local jurisdictional matters that a private owner would assume in a relationship to a performing contractor. These matters include securing local building permits and rights of entry, control of traffic and pedestrians in the interest of safety and public welfare, and compliance with local building ordinances. Refer also to 44 CFR 205.76(a)(7) regarding eligibility of costs of administrative expenses.

§ 205.122 Availability of materials.

For the purposes of this section, "construction materials" shall include building materials and materials required for repair or replacement of housing, public facilities, or normal farm and business facilities. The Regional Director may, at the request of the Governor of an affected State, provide for a survey of construction materials needed in the disaster affected area on an emergency basis for housing repair, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and may take appropriate action to assure the availability and the fair distribution of needed materials. Where possible, such action may include the voluntary allocation of such materials for a period of not more than 180 days after the major disaster. The Regional Director shall implement any allocation program to the extent possible by working with and through those companies that traditionally supply construction materials in the affected area.

Subpart I—Reimbursement of Other Federal Agencies

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148; and Delegation of Authority, 44 FR 44792.

SOURCE: 45 FR 26053, Apr. 17, 1980, unless otherwise noted.

§ 205.150 Purpose.

This subpart prescribes the procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Act. It is effective for assistance obtained or authorized in emergencies or major disasters declared after August 2, 1976. Further details of direct Federal assistance other than reimbursement are covered in Subpart H, § 205.121.

§ 205.151 Assistance from other Federal agencies.

(a) The Associate Director or Regional Director, in determining the nature and extent of assistance required to implement authorities under the Act, shall consider the types of assistance available from other Federal agencies. Either the Associate Director or the Regional Director may request or direct other Federal agencies to provide available assistance as necessary.

(b) All requests or directives to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall contain a specific reference to the anticipated level of reimbursement.

§ 205.152 Expenditures eligible for reimbursement.

(a) The Associate Director or the Regional Director may not approve reimbursement of costs incurred while performing work under an agency's own authority.

(b) The Associate Director or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services requested by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Associate Director.

(3) Travel and per diem of Federal military personnel assigned solely to performance of services requested by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Associate Director.

(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance requested by the Associate Director or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing requested assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Associate Director or the Regional Director and the agency.

§ 205.153 Procedures for reimbursement.

(a) Federal agencies may submit requests for reimbursement of amounts greater than $1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures within 90 days after completion of the agency's work under each request or directive for assistance. Requests for reimbursement are made on SF 1081, Voucher and Schedule of Withdrawals and Credits.

(b) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A-12 and by any subobject class used in the agency's accounting system. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(c) Reimbursement requests shall cite the specific directive or request for assistance under which the work was performed, and the disaster identification number. Requests for reimbursement of costs incurred under more than one directive or request may not be combined for billing purposes.

(d) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(e) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

Subpart J—General Insurance Requirements

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5201); Executive Order 12148

(44 FR 43239); and Delegation of Authority (44 FR 44792).

SOURCE: 44 FR 71794, Dec. 11, 1979, unless otherwise noted.

§ 205.200 General.

(a) Section 314 of the Act, and the Flood Disaster Protection Act of 1973, Pub. L. 93-234, establish insurance requirements as a condition for approving certain disaster assistance under the Act. This subpart pertains to assistance under sections 402 and 419 of the Act. Specific requirements pertaining to flood insurance under Pub. L. 93-234, as amended, are contained in Subpart K of this regulation.

(b) Prior to approval of a Federal grant for the restoration of property, the applicant shall notify the Regional Director of any entitlement to insurance settlement or recovery for such property. The Regional Director shall reduce the grant by the actual amount of insurance proceeds received by the applicant. In the event that insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement shall be limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and to the limit of the applicant's insurance policy.

§ 205.201 Definitions as used in this subpart.

(a) "Assistance" means any form of Federal grant under sections 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property as the result of a major disaster or emergency declaration and which property is not excluded pursuant to § 205.202.

(b) "Property" means any structure, vehicles, equipment, materials, or supplies.

§ 205.202 Exclusions.

The following categories of Federal disaster assistance are excluded from the requirements to obtain and maintain such insurance as is required by section 314 of the Act and by this subpart:

(a) Emergency assistance provided under section 305 or 306 of the Act.

(b) Assistance otherwise eligible under section 402 or 419 of the Act for any State-owned property that is covered by an adequate State policy of self-insurance approved by the Associate Director for Disaster Response and Recovery (the Associate Director).

(c) Assistance under section 402 or 419 of the Act for any property for which insurance is not reasonably available, adequate, and necessary, such as: Roads, streets, bridges, and other highway facilities; traffic controls; parking meters; drainage channels and debris basins; dikes and levees; pumping stations; and utility distribution systems.

(d) Assistance for which flood insurance is required under Pub. L. 93-234, as implemented by 44 CFR Part 205, Subpart K.

§ 205.203 Applicability.

(a) The requirements of this subpart shall apply to all assistance pursuant to section 402 or 419 of the Act with respect to any major disaster or emergency declared by the President after May 22, 1974, unless excluded under § 205.202.

(b) The Regional Director may not approve any such assistance unless the applicant has provided assurances, acceptable to the Regional Director, that the applicant will obtain and maintain any insurance required under these regulations.

(c) The Regional Director may defer approval of otherwise eligible project applications for up to 6 months to permit the applicant to provide such assurances referred to in paragraph (b) of this section. The Associate Director may extend the time for submission of such assurances by the applicant.

(d) No applicant for assistance under sections 402 or 419 of the Act shall receive assistance for any property or part thereof for which it has previously received assistance under the Act unless the applicant obtained and maintained the insurance required under section 314 of the Act and these regulations with respect to such property. In cases where insurance was not maintained, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit facilities which receive assistance under section 402(b) of the Act. Private nonprofit organizations shall submit the necessary documentation and assurances required by this subpart through the appropriate applicant.

(f) The Regional Director shall require flood insurance as the result of the flooding major disaster, when reasonably available, adequate, and necessary under section 314 of the Act for assistance even though the flood damaged building concerned is located outside the base floodplain.

§ 205.204 Type of insurance.

(a) Assurances by the applicant under this subpart to obtain reasonably available, adequate, and necessary insurance shall be required only for the type or types of hazard for which the major disaster was declared. The Regional Director shall not require greater types and extent of insurance than are certified to him/her as reasonable by the appropriate State Insurance Commissioner responsible for regulation of such insurance.

(b) The Regional Director shall make a determination as to the type and extent of insurance that is reasonable when he/she is unable to obtain a prompt certification by the State Insurance Commissioner in response to a formal written request.

§ 205.205 Extent of insurance.

Prior to approval of assistance under section 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property for which insurance is required under this subpart, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain reasonably available, adequate, and necessary insurance to protect against future loss in an amount equal to the amount of the grant under section 402 or 419.

§ 205.206 Duration of insurance coverage.

The applicant shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or of the insured property, which is the lesser.

§ 205.207 Assurances for categorical grants.

Where insurance is required under this subpart, the applicant shall submit evidence of applicable insurance coverage or other related assurances with the project application. The type and extent of such insurance coverage shall be subject to approval by the Regional Director.

§ 205.208 Assurances for flexible funding.

When applying for assistance under the provisions of sections 402(f) and 419 of the Act, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain such insurance as required by section 314 of the Act and the regulations in this subpart. As part of such assurance, the applicant shall agree to provide to the Regional Director a listing of insured property, including location, description, extent and duration of insurance coverage, name and address of the insurer, and applicable insurance policy numbers. The Regional Director, after a review of the listing and schedule required by Subpart H (Project Administration) and other reviews as he/she considers necessary shall, if appropriate, require the applicant to obtain additional insurance under the Act and these regulations.

§ 205.209 Self-insurance.

A state may elect to act as a self-insurer with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under sections 402 or 419 of the Act or subsequently, and if accompanied by a plan for self-insurance which is satisfactory to the Associate Director, shall be considered as complying with subsection 314(a) of the Act. After approval as self-insurer by the Associate Director, no State shall receive assistance under such sections for any property or part thereof for which it has previously received assistance under the Act, to the extent that insurance for such property or part thereof would have been reasonably available.

Subpart K—Flood Insurance Requirements

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

SOURCE: 45 FR 37440, June 3, 1980, unless otherwise noted.

§ 205.250 General.

(a) The Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition or construction purposes for use in any area defined by the Director, FEMA, as an area having special flood hazards. This subpart implements Pub. L. 93-234 as amended, except as specified in paragraph (b) of this section.

(b) Specific flood insurance requirements pertaining to Temporary Housing Assistance and Individual and Family Grants are contained in new Subpart D, §§ 205.52 and 205.54, respectively. To the extent this subpart is inconsistent with those sections, the more specific regulations in those sections apply.

§ 205.251 Definitions.

As used in this subpart:

(a) "Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on a foundation.

(b) "Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native Village or organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(c) "Federal financial assistance" means any loan or grant or other form of direct or indirect Federal financial assistance under the Act and these regulations which is not excluded under § 205.252.

(d) "Financial assistance for acquisition or construction purposes" means any form of Federal financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machines, equipment, fixtures, and furnishings contained or to be contained in them but shall exclude assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood).

(e) "National Flood Insurance Program" (NFIP) means the program authorized by 42 U.S.C. 4001-4128.

§ 205.252 Exclusions.

(a) The following categories of Federal disaster assistance are excluded from the provisions of the Flood Disaster Protection Act of 1973:

(1) Federal financial assistance on any State-owned property that is already covered by an adequate State policy or self-insurance approved by the Director, Federal Emergency Management Agency.

(2) Federal financial assistance under Title II of the Act.

§ 205.253 Applicability.

(a) Federal financial assistance for acquisition or construction purposes.

(1) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards unless the community in which such area is situated is participating in the National Flood Insurance Program at the time of the approval. This prohibition applies only to communities which have been formally identified for at least one year as communities containing one or more areas having special flood hazards. The "time of approval" of financial assistance is the date on which the authorized FEMA official obligates Federal grant or loan funds. This subsection does not mandate a requirement for community participation in

connection with damage resulting from a hazard other than flooding.

(2) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Program unless the building or mobile home and their contents to which the financial assistance relates are or will be covered by an adequate policy of insurance. As in § 205.253(a)(1) of this part, this subsection does not mandate a requirement for an insurance purchase in connection with damage resulting from a hazard other than flooding.

(i) As a condition for receiving a grant under the Act, an adequate flood insurance policy for a project involving emergency or permanent work shall be:

(A) The Standard Flood Insurance Policy (44 CFR Part 61, Appendix A) or one which complies with the criteria for the "Acceptance of Private Flood Insurance To Meet Statutory Requirement (43 FR 7147, at "D"); and

(B) Purchased and maintained to cover the insurable building and any contents to which the grant relates during the anticipated useful life of the project, as determined by the Regional Director, in an amount equal to the lesser of the project cost (less estimated land cost, if any) or the maximum available limits of flood insurance coverage under the National Flood Insurance Act of 1968.

(ii) For purposes of this paragraph (a)(2), the term "project" shall mean the construction, acquisition, restoration or repair of a building or a part thereof together with the repair, restoration or replacement of any personal property to which the financial assistance relates.

(3) In the case of paragraph (a)(1) or (2) of this section, any building may become eligible for Federal financial assistance if the community concerned:

(i) Qualifies for and enters the NFIP within six months after the date of the Presidential declaration,

(ii) Obtains and maintains the necessary flood insurance, and

(iii) Provides FEMA with written evidence of that insurance.

(4) If the applicant replaces a building outside of the base floodplain, Federal financial assistance will not be denied for failure of the community to participate in the NFIP or to obtain/maintain flood insurance, unless required under Subpart J of these regulations by the Regional Director as a condition for disaster assistance under the Act.

(b) The Regional Director shall work closely with the Governor's Authorized Representative, and State and local governments, to ensure that the provisions of this subpart for special flood hazard areas are considered in the processing and approval of project applications. In addition, the Regional Director shall require compliance with the provisions of this subpart in issuing mission assignments for direct Federal assistance under Subpart H of these regulations whenever property subject to the provisions of the Flood Disaster Protection Act of 1973 is involved.

(c) For any State owned building not covered by an approved State policy or self-insurance, the Regional Director shall require proof of adequate flood insurance covering proposed disaster assistance eligible for reimbursement under the Act.

(d) In accordance with § 205.253(a)(1) and (2) of this part, the applicant shall make a commitment to continue flood insurance for the useful life of the project, as determined by the Regional Director. For those buildings on which the eligible applicant is delinquent on prior flood insurance commitments in previous disasters, the Regional Director shall suspend any future Federal financial assistance for acquisition or construction purposes until such delinquency is eliminated. In such cases, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) When a State has been approved by the Director, FEMA, as a self-insurer prior to the declaration of a major disaster or an emergency, the Regional Director shall determine the amount of self-insurance applicable to any building damaged by a major disaster and shall deduct such self-insurance coverage from the Federal grant for disaster assistance work.

(f) In administering this section, the Regional Director shall utilize current information from the Federal Insurance Administration to identify States having a satisfactory program of self-insurance, the communities eligible for flood insurance under the regular or emergency programs, flood hazard boundary maps, and flood insurance rate maps.

Subpart L—[Reserved]

Subpart M—Hazard Mitigation

AUTHORITY: Secs. 406 and 601, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5176 and 5201); Executive Order 12148; and Delegation of Authority (44 FR 44972).

SOURCE: 44 FR 64809, Nov. 8, 1979, unless otherwise noted.

§ 205.400 General.

(a) *Purpose.* The purpose of this subpart is to prescribe the actions and procedures for implementing Section 406, Pub. L. 93-288, as amended. Any conflicting provisions elsewhere in 44 CFR Part 205 are superseded by this subpart. It is also the purpose of this subpart to clarify the responsibilities for hazard mitigation of the various Federal agencies and State and local governments as the result of a major disaster or emergency declared by the President.

(b) This subpart covers actions, procedures, standards, and criteria for accomplishing optimum results in reduction, avoidance and mitigation of all types of future disasters. These regulations are intended for the use of Federal, State and local governments, as well as organizations and individuals administering or receiving Federal grant or loan assistance as the result of a major disaster or emergency. They are also intended to complement and reinforce implementation in other subparts of these regulations of: (1) The President's Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands; and (2) the National Environmental Policy Act, of 1969 Pub. L. 91-190. When a major disaster or emergency occurs, the hazard mitigation actions to cope with those hazards identified as the result of the major disaster or emergency shall receive priority.

§ 205.401 Definitions.

In this subpart reference is frequently made to such words as hazard reduction, avoidance, and mitigation; land use and construction regulations; and disaster proofing. As used in this subpart:

(a) "Avoidance" means to eliminate a hazard through measures such as relocation or prohibition of construction within an area susceptible to risk or danger, or by other means.

(b) "Construction practices" means codes, standards, and specifications applicable to repairs, or to alterations or new construction of a facility or structure.

(c) "Disaster proofing" means those minimum alterations or modifications to damaged facilities that could be expected to prevent or substantially reduce future damages to the repaired or reconstructed facility, or to make it disaster resistant.

(d) "Hazard" means any natural source of danger or element of risk identified following a major disaster or emergency.

(e) "Land use regulations" include zoning for purposes compatible with prudent floodplain management and both preventive and corrective restrictions on construction, repairs, or alterations of facilities within specified areas. Preventive restrictions provide regulation of new land use, i.e., nonstructural disaster control measures such as use of high hazard areas for parks, farms, and recreational areas. Corrective restrictions include:

(1) Floodproofing;

(2) Acquisition;

(3) Insurance;

(4) Removal of non-conforming uses.

(f) "Mitigation" means to alleviate by softening and making less severe the effects of a major disaster or emergency and of future disasters in the affected areas, including reduction or avoidance.

(g) "Reduction" means to diminish in strength and intensity or to restrict or lessen the size, amount and extent of damage resulting from the major disaster or emergency or to be expected as the result of future disasters.

§ 205.402 Implementing actions.

(a) The FEMA role under Section 406 of the Act is one of providing leadership, not through mandates, but through governments and assistance to them in their initiatives to develop and maintain effective mitigation standards. FEMA must provide realistic and attainable mitigation options for their consideration and adoption. Ultimately, improved programs can only be developed when each party understands the benefits to be gained through hazard mitigation and is willing to work in a shared environment of cooperation and commitment.

(b) While the need to respond quickly to disasters and life-threatening conditions must remain paramount, FEMA shall assure that the ultimate benefits to be gained through effective hazard mitigation programs are not diminished and remain a primary objective.

(c) FEMA shall provide technical advice and assistance for hazard mitigation to local or State governments and to certain private nonprofit organizations eligible for grant assistance under Section 402(b) of the Act. Such technical advice and assistance shall be supplementary to that available from any other State or Federal agencies under their existing programs. Technical advice may also be provided for water conservation measures in affected areas short of water as the result of the major disaster or emergency.

(d) FEMA shall encourage local or State governments to adopt safe land-use regulations and construction practices or standards. When such action is taken, after the declaration of a major disaster or emergency, the Associate Director may approve such regulations, practices or standards as applicable deviations as a condition for any Federal grants under Section 402 of the Act. When such action is not taken, the Associate Director may still prescribe appropriate standards as applicable to federally-assisted projects resulting from the major disaster or emergency being restored under Section 402 of the Act. The Associate Director may also prescribe such standards for prospective applicability to all similar repairs or new construction of facilities within the applicant's jurisdiction. In such instances, the applicant shall be notified in writing by the Regional Director through the State of these prescribed standards and that any future damages or destruction of facilities due to failure to comply with such prescribed standards would not be eligible for FEMA grant assistance under Section 402, except under unusual circumstances when approved in the public interest by the Associate Director.

(e) Local governments usually have the decision-making responsibility within their jurisdictions for hazard mitigation measures, including sound land-use regulations and safe construction practices. The State has the central role in resource management and in hazard mitigation throughout the State. Federal technical advice and assistance is supplementary in nature.

(f) FEMA recognizes the heavy administrative workloads of local and State governments in coping with major disasters or emergencies and, in initiating any hazard mitigation programs, it will be sensitive to these existing workloads. In developing any proposed implemenation plan and procedures, FEMA's emphasis is to focus the efforts of all participants on achieving positive results in hazard mitigation. It encourages initiative by State and local governments within the context of their laws, regulations, and customs.

(g) For all major disasters and emergencies involving actions or affecting in floodplains or wetlands appropriate hazard mitigation measures shall be taken as required by FEMA's Floodplain Management regulations (44 CFR Part 9).

(h) Nonstructural disaster protection methods or measures shall be fully considered and emphasized where consistent with primary program purposes of the Act.

(i) As a condition for any grant for federally assisted projects under Section 402 of the Act, the Associate Director has prescribed as a standard, floodproofing measures which the Regional Director determines are appropriate and practicable as disaster-proofing under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain.

(j) During hazard mitigation actions involving water resources under this subpart, the State shall be the focal point for water resource management.

(k) As a condition for any grant or loan under the Act for municipal water supply or waste water treatment facilities or systems, appropriate water conservation requirements shall be included and any disincentives to water conservation shall be removed.

§ 205.403 Responsibilities.

(a) *General.* After a declaration of a major disaster or emergency coordinated effort of all participants is required to identify the significant hazards and appropriate mitigation measures to cope with those hazards.

(b) *FEMA.* The Regional Director shall include appropriate provisions for hazard mitigation under this subpart in the Federal/State Agreement. He/she shall coordinate with the Governor's Authorized Representative to provide for a joint Federal/State team to survey the disaster affected area soon after a major disaster or emergency declaration for these purposes:

(1) Identify significant hazards in the affected area, giving priority to disaster-related hazards;

(2) Evaluate the impacts of these hazards and measures which will mitigate these impacts; and

(3) Recommend appropriate hazard mitigation measures.

The Regional Director shall designate a FEMA staff member to serve as Hazard Mitigation Coordinator (HMC) on the FEMA/State survey team and to confer with local, State and Federal officials concerning these hazards and hazard mitigation measures. Based on these consultations by the FEMA HMC and the Regional Director, and on decisions by local or State agencies which may establish new or modified land use regulations or standards, the Regional Director may recommend that the Associate Director approve or prescribe appropriate standards. The Regional Director shall also designate a FEMA planner to serve on the FEMA/State planning team. Concurrently with the FEMA/State survey team activities, the FEMA planner shall coordinate with the State planner designated by the Governor's Authorized Representative in working with participating Federal, State, and local agencies, organizations or individuals in accomplishing hazard mitigation planning as required by the Regional Director in accordance with 44 CFR 205.403(e), 44 CFR 205.405, 44 CFR 205.410(b), and 44 CFR 205.411(c). The Regional Director may provide technical advice and assistance to local or State agencies for the purpose of accomplishing hazard mitigation activities under this subpart. He/she shall review State evidence of compliance with approved hazard mitigation activities and shall provide to the Associate Director an after-action report when all such hazard mitigation activities are completed or terminated. Because the Regional Director requires that each applicant take appropriate hazard mitigation measures as a condition for approval of a FEMA grant or loan, he/she shall follow up with the State to recover Federal funding whenever an applicant fails to satisfy any conditions upon which the approval of the grant was based. The Regional Director may arrange for other Federal agencies to participate in hazard mitigation activities under this subpart.

(c) *State.* The Governor's Authorized Representative is responsible for State performance of hazard mitigation activities under the Federal/State Agreement and this subpart. He/she shall designate a State Hazard Mitigation Coordinator (HMC) to serve on the FEMA/State survey team and a State planner to serve on the FEMA/State hazard mitigation planning team. The Governor's Authorized Representative shall arrange for State and local participation in FEMA/State surveys and FEMA/State planning in the affected areas of the State for the purposes stated above. The State

HMC shall arrange for consultations on the findings and recommendations from the joint survey and shall follow up to assure that timely and adequate local and State hazard mitigation actions are taken. Whenever appropriate, he/she shall arrange for State funding or technical assistance to eligible applicants for the purposes of accomplishing State-approved hazard mitigation actions. He/she shall arrange for State inspection or audit to verify compliance with approved hazard mitigation measures. When these activities are completed in accordance with the Federal/State Agreement, he/she shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance. Similarly, the State planner shall work with the FEMA planner in accomplishing the tasks referenced in 44 CFR 205.403(b) of this part.

(d) *Local.* The applicant is responsible for local performance of hazard mitigation measures under the Federal/State Agreement and this subpart. Each applicant shall designate a local Hazard Mitigation Coordinator (HMC) to work with the FEMA/State survey team as required by the State HMC. Working with the FEMA/State survey team, the local HMC will assess the damage within the local jurisdiction. The local HMC shall arrange for local participation in consultations with FEMA/State survey teams about hazard mitigation actions under this subpart. The local HMC is responsible for informing local officials and interested citizens about significant survey team activities. He/she shall also collect any local comments on these matters and report them to the State HMC.

With any project application, each applicant shall submit adequate assurances that any required hazard mitigation measures have been taken or will be completed. The applicant, to the extent of its legal authority, is responsible for implementing and enforcing land use regulations and safe construction practices which are conditions agreed upon for FEMA grants or loans. The applicant shall provide evidence of compliance with conditions for any approved FEMA grants or loans as required by the Governor's Authorized Representative. The applicant's local Authorized Representative shall also arrange for the applicant's planner to work with the FEMA/State planning team in reviewing and updating existing hazard mitigation plans, or in developing new hazard mitigation plans as may be scheduled by the Governor's Authorized Representative and requested by the Regional Director.

(e) *Federal/State agreement.* When necessary to clarify responsibilities under this subpart for a major disaster and emergency, clarification shall be provided by amendment to the Federal/State Agreement. The following is a typical paragraph:

HAZARD MITIGATION CLAUSE ADDED TO FEDERAL-STATE AGREEMENT

The State agrees that, as a condition for any Federal loan or grant, the State or the applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees: (1) to follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; (2) to prepare and submit not later than 180 days after the declaration to the Regional Director for concurrence, hazard mitigation plan or plans for the designated areas, and (3) to review and update as necessary disaster-mitigation portions of the emergency plans.

The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions.

§ 205.404 Surveys.

(a) *Damage assessments.* Prior to a declaration of a major disaster or emergency, local, State and Federal preliminary assessments of damage may identify major hazards and opportunities for hazard mitigation actions. This information will be transmitted to the FEMA/State survey team as indicated below. During the period immediately following a major disaster or emergency, each applicant is expected to use its resources and capabilities as necessary to perform emergency work, such as debris removal or emergency measures to save lives, or to protect public health and safety or to protect property. The identification of hazards by the damage assessment team and the performance of the emergency work may result in significant hazard mitigation. Damage Survey Reports (DSR) (see 44 CFR 205.114(d)) completed by Federal inspectors will also include identification of hazards and recommendations of mitigation measures to be incorporated in the repair work.

(b) *Survey activities.* After a declaration of a major disaster or emergency, the Governor's Authorized Representative shall schedule a briefing for State staff members about their participation in FEMA/State survey team activities.

The survey team shall be made up of the FEMA HMC and the State HMC, plus other Federal or State staff members or consultants. This FEMA/State survey team shall work with the appropriate local HMC. Utilizing the information from the preliminary damage assessments, the DSR's referred to above, and all other pertinent information readily available, the survey team shall visit the sites of significant damage to evaluate the hazards. This evaluation may include investigation of selected individual damaged facilities plus review of applicable land use regulations, construction standards, and other appropriate hazard mitigation measures. The Federal/State survey team shall work with the local HMC and other local officials as necessary during this evaluation. The FEMA HMC shall supply model regulations, suggested standards, and other pertinent references for use by the survey team. For each identified significant hazard the survey team shall include appropriate recommendations of hazard mitigation measures in its final report (see 44 CFR 205.411(c)).

§ 205.405 Hazard mitigation plans.

(a) *Plans.* For each hazard-prone area, the FEMA/State planning team shall review and evaluate existing local or State emergency plans for hazard mitigation. Particular attention shall be given to the adequacy of plans for warning and evacuation. In those cases where no such plans exist, this planning team shall report its findings and recommendations concerning specific needs to develop and maintain such plans. The Regional Director shall require the State to update existing State or local plans or to develop such new hazard mitigation plans as he/she deems necessary in consultation with the Governor's Authorized Representative. In determining whether to impose such a requirement on a local government, consideration shall be given to the opportunities presented for effective hazard mitigation, the size and composition of the local government, the local government's authority to regulate land use and to require safe construction practices, and the local government's exercise of such authority. The Governor's Authorized Representative, or Regional Director, may provide technical advice and assistance to State agencies or local governments in developing new plans or updating existing plans to mitigate hazards identified as the result of the major disaster or emergency within the affected areas.

(b) *Objectives.* The identification of hazards following a major disaster or emergency and accomplishment of appropriate hazard mitigation measures are the short-term planning objectives to be required by the Federal/State Agreement. The Regional Director and the Governor's Authorized Representative shall focus with highest priority on these objectives in verifying compliance with the Agreement as a condition for Federal loans or grants.

(c) *Mapping.* The FEMA/State planning team shall verify the impact of the major disaster on disaster frequencies computed prior to the major disaster through contacts with agencies maintaining such records. This planning team shall also consider the advisability of redefining boundaries of high-hazard areas as the result of their findings and shall make recommendations to the Regional Director on any needs for new mapping or remapping of high hazard areas.

(d) *Schedules.* In its recommendations of appropriate hazard mitigation measures, the planning team shall suggest target dates and schedules for accomplishment of each recommended measure.

(e) Measures which relate only to specific construction projects shall be specified as conditions for approval of applicable FEMA grants or loans. Those hazard mitigation measures which require other actions by applicants for FEMA grants of loans shall be reported by the FEMA/State survey team to the Governor's Authorized Representative, for referral to the FEMA/State plannig team or other appropriate action.

§ 205.406 Hazard mitigation measures.

(a) *General.* Certain types of actions may be taken to achieve hazard mitigation including:

(1) Avoidance,

(2) Reduction, and

(3) Adoption and enforcement of land use regulations and of safe construction practices.

(b) *Avoidance.* For siting new construction of facilities or structures, location outside of high hazard areas is the preferred solution. For each hazard identified following a major disaster or emergency, the survey team shall assess the feasibility of avoidance of high hazard areas in cases where new construction, alteration, or major repairs are involved in restoration of damaged or destroyed facilities. The survey team shall also make specific recommendations concerning land use regulations and rezoning to achieve the objectives of avoidance whenever appropriate.

(c) *Reduction.* Reduction of the effects of hazards on facilities and people may be achieved by reducing the area or level of the hazard itself or by reducing the impact of the hazard on individual facilities. Examples of the first are flood control projects such as dams, levees, floodwalls or channel improvements. In some situations, these may be the only practicable measures to protect facilities or structures already located in the floodplain. Reducing the impact on a facility may be accomplished by such measures as installing shearwalls or bracing in buildings or installing check valves in utility lines in earthquake-prone areas. In flood-prone areas, tie downs may be used for mobile homes, lower levels of building may be waterproofed, water damage resistant materials may be used in reconstruction, or such lower levels may be restricted to nonhazardous uses.

§ 205.407 Land use regulations.

(a) *Local zoning.* Regulation of land use within its jurisdiction is normally a function of local government. In some cases, the local government may have already adopted land use regulations or zoning prior to a major disaster or emergency. Modification or updating based on current maps and model regulations may be necessary. Some re-mapping may frequently be required. In certain cases, the existing land use regulation may be adequate to cope with the identified hazards, if properly enforced. State, Federal, or private interests may propose model zoning regulations, but adoption and enforcement of such regulations remain with the responsible State or local government. Certain State or Federal restrictions may be locally adopted and enforced by mutual agreement, or as a condition for certain types of financial assistance. The survey team shall make its recommendations based on field observations and evaluation of hazards within the affected areas. Consultations with the applicant, the State HMC, and the FEMA HMC may then be necessary to identify the applicant's options for decisionmaking. The State or FEMA HMC shall provide encouragement, technical advice, and assistance to the applicant to adopt and enforce appropriate land use regulations. The FEMA/State planning team shall follow up on contacts with the State or local government if appropriate.

(b) *State land use regulations.* For State-owned properties outside of local jurisdictions, the responsible State agency adopts and enforces land use regulations. In some cases, these State regulations may serve as model regulations for local governments. The planning team may make recommendations on new State land use regulations for State lands and provide technical advice and assistance to the State for developing such regulations. The State may require local adoption of Statewide land use regulations as a condition for State aid, such as grants, loans, or technical assistance.

(c) *Federal land use regulations.* For federally owned lands outside of local or State jurisdictions, the responsible Federal agency adopts and enforces land use regulations which may serve as models for local or State regulations in like circumstances. The FEMA/State planning team may encourage the Federal agency to adopt land-use regulations currently used locally as being applicable to the Federal property. A Federal agency may require local or State governments to adopt and enforce certain hazard mitigation regulations as a condition for Federal assistance or participation in federally assisted programs. For example, the National Flood Insurance Program requires certain minimum floodplain management regulations for participation by State or local government. Executive Order 11988 also imposes additional constraints on Federal grants or loan assistance within the floodplains. After reviewing a project application in accordance with FEMA's Floodplain Management regulations (44 CFR Part 9), the Regional Director may determine that no practicable alternative to locating in the floodplain exists. The Regional Director then shall require appropriate measures to minimize harm to the facility, to other property and to the floodplain and to preserve and restore the natural and beneficial values of the floodplain. Non-structural uses of floodplains and wetlands, such as open space and parks, shall be encouraged whenever practicable. Coastal zone management plans impose similar requirements for local, State, and Federal floodplain management regulation. As model hazard mitigation regulations become available to cope with other types of major disasters or emergencies including earthquakes, windstorms, and fires, the survey team may recommend them as requirements for federally assisted projects, or for adoption and enforcement by applicants for Federal grant or loan assistance. Survey or planning teams shall make findings and recommendations as appropriate for development or updating of model hazard-mitigation regulations by various Federal agencies for mitigation of hazards identified following a major disaster or emergency. The FEMA planner may arrange for Federal technical advice and assistance to local or State governments in modifying model land use regulations to satisfy local requirements.

(d) *FEMA land use standards.* As the result of a major disaster or emergency, the Regional Director may determine that there is no practicable alternative to permitting approval of a grant or loan for an action within a high hazard area. For example, refer to 44 CFR Part 9 covering the eight-step decisionmaking process for floodplain management. In those cases where a practicable alternative exists outside the base floodplain, the Regional Director shall decline to approve a FEMA grant or loan unless the facility or structure is relocated. The Regional Director may take similar action for other types of disasters, such as tornadoes or earthquakes, where a practicable alternative exists outside the high hazard area. Under the Act, the Associate Director may prescribe appropriate standards as applicable for FEMA assisted projects as the result of a major disaster or emergency, as discussed in 44 CFR 205.402(d). When the Regional Director determines that restoration of a damaged or destroyed facility in a hazard area is not a practicable alternative, he/she may decline to authorize FEMA disaster assistance to restore facilities at the original site, or within the hazard area where such facilities are subject to repetitive heavy damages or destruction. When an applicant decides to relocate facilities being restored under Section 402 of the Act outside of a high hazard area, purchase and development of the site is the applicant's responsibility. The Regional Director may approve Federal grant assistance for permanent restoration of eligible facilities erected on the new site: Provided, that the Regional Director determines that the Federal grant assistance for such project is practicable and in the public interest.

§ 205.408 Construction practices.

(a) *General.* In certain cases, permanent repairs, alterations, or new construction to predisaster design may not provide usable facilities or structures safe from identified hazards. Alternate actions available are relocation; restorative work to conform to updated safe construction practices; or no approval for Federal funding of the proposed work. For FEMA-assisted projects under the Act, the applicant's decision on standards for restorative work shall be subject to review and approval by the Governor's Authorized Representative and the Regional Director. In identifying hazards and in its damage evaluation, the survey team shall inventory existing construction practices or standards related to damaged or destroyed facilities and may recommend adoption and enforcement by each applicant of additional safe construction practices.

(b) *Local standards.* When a major disaster or emergency occurs, the FEMA/State survey team shall inventory and evaluate the standards already adopted by the applicants for the types of repairs, reconstruction, or restorative work for which Federal grant or loan assistance is being requested. During the field surveys this team, or the FEMA/State planning team may also have model State or Federal standards available for consideration by the applicants. Such standards for new construction may be different from those for repairs or alterations to existing facilities or structures. Federal or State agencies may provide technical advice and assistance to local governments, particularly in the form of model standards to be modified for local use. In discussions of hazard mitigation measures, the survey team or the planning team may develop appropriate recommendations to the applicant for updating existing standards, or for adopting new ones. As the result of the major disaster or emergency, each applicant has the responsibility for adopting or updating appropriate standards and for enforcing them. Such local action for nonfederally funded projects shall be encouraged by the survey team and the planning team working together for a common purpose. An applicant may request State or FEMA technical advice and assistance in taking these actions. A new standard which the applicant submits for approval by the Associate Director shall include the scope of application of the standard; that is, whether the standard covers all public facilities or certain federally funded projects only. The standard shall also be accompanied by a description of local or State enforcement procedures.

(c) *State standards.* For State-owned buildings, structures, or facilities outside local jurisdictions, the responsible State agency adopts and enforces applicable standards. In some cases these may serve as a model for similar action by local governments. As a condition for State approval of grant or loan assistance as the result of a major disaster or emergency, the Governor's Authorized Representative may recommend to the Regional Director that the Associate Director prescribe certain standards for the FEMA-assisted project for hazard mitigation purposes. The State HMC may also provide technical advice and assistance on hazard mitigation measures to applicants, private organizations, and individuals.

(d) *Federal standards.* (1) For federally owned buildings, structures, or facilities outside local or State jurisdictions, the responsible Federal agency adopts and enforces applicable Federal standards. These may serve as models for local or State adoption and enforcement in similar circumstances.

(2) The National Flood Insurance Program (NFIP) prescribes certain Federal standards for repairs, alterations, and new construction within floodplains as a condition for acceptance of a flood-prone community within that program. The Associate Director has prescribed as a standard, floodproofing measures which are appropriate as disaster proofing and practicable under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain. For other types of disasters, similar standards for hazard mitigation may be available and appropriate for local, State and Federal use.

(3) The FEMA/State survey team, and the planning team, shall be aware of existing standards and shall recommend appropriate examples to applicants for consideration as hazard mitigation related to the major disaster or emergency.

(e) *FEMA standards.* Working with the State and applicants, through the survey team and the planning team, the Regional Directors shall encourage local adoption and enforcement on all projects, including non-federally assisted projects, of appropriate standards for hazard mitigation. When a local or State government takes such action, the Regional Director may recommend that the Associate Director approve such standards as applicable for FEMA-assisted projects, after appropriate consultations within FEMA, with local and State officials, and with appropriate elected officials of general purpose local governments. Based on these consultations and all available information, the Associate Director may approve such standards as deviations applicable to FEMA assisted projects. When the local or State government declines to adopt and to enforce them for non-FEMA-assisted projects, the Associate Director, after appropriate FEMA, State and local consultations, may prescribe appropriate standards which are applicable only to FEMA assisted projects. Refer also to 44 CFR 205.402(d). The Regional Director may then approve FEMA grant or loan assistance to enable the applicant to comply with them on FEMA assisted projects. The Regional Director may suspend or refuse to approve any project application until he/she is satisfied that the approved work will result in a facility or structure safe and usable for the predisaster function, or for alternate functions proposed as flexible funding by the applicant in accordance with these regulations. (See 44 CFR 205 Subpart H for an explanation of funding options.)

§ 205.409 Consultations.

(a) *General.* It is the intent of these regulations to provide opportunity for State and local officials and interested individuals to participate in the hazard mitigation process. At various points in the process, consultations and meetings with the FEMA/State survey team or planning team will provide input from these sources as detailed in the following paragraphs.

(b) *Survey team.* Members of the survey team shall make frequent contacts and have consultations with various applicants until the field surveys are completed and appropriate hazard mitigation measures are recommended. The State HMC is responsible under the Federal/State Agreement to arrange for appropriate consultations and notices to inform the public on those decisionmaking processes involved in the work of the survey team. An applicant or the FEMA HMC may request such arrangements when desired.

(c) *Planning team.* Similarly, members of the FEMA/State planning team, in coordination with the survey team, shall make contacts and have consultations with various applicants or their planners as the planning team may require to accomplish its assigned tasks.

(d) *Meetings.* After the declaration of a major disaster or emergency, the Governor's Authorized Representative, in coordination with the Regional Director, schedules one or more meetings with local and State officials representing potential applicants for Federal assistance. These are generally known as "Applicant's Briefings". At these meetings FEMA and State staff members brief these local and State officials on FEMA policies and procedures for Federal grant or loan assistance under the Act. The Governor's Authorized Representative may arrange for the survey team and the planning team to participate in these briefings when desirable. The FEMA/State survey team and the planning team will normally schedule followup meetings later to discuss hazard mitigation measures with State and local officials. When necessary under FEMA's regulations pertaining to floodplain management and environmental review (44 CFR Parts 9 and 10) early public notice may be given of pending Federal actions. Based on the responses to such public notice, or when otherwise appropriate, the Regional Director may request the Governor's Authorized Representative to schedule public hearings for purposes of consultation with interested parties on hazard mitigation measures or problems.

(e) *Project Management.* Normal FEMA procedures for damage survey reports, project applications, final inspections, audits, and final payments require local, State, and Federal contacts and coordination. Appeal procedures provide for further reviews and consultations of all interested parties including the Associate Director and his/her staff. These procedures provide documentation to support the hazard mitigation measures taken under Section 406 of the Act.

§ 205.410 Compliance.

(a) *Federal/State Agreement.* Requirements for evidence of compliance may vary for each major disaster or emergency depending on its nature, severity, and magnitude as well as on variations in the resources, capabilities, organization, and staffing of the local and State governments. Any specific requirement for State evidence of compliance with hazard mitigation measures may be spelled out in the Federal/State Agreement.

(b) *Plans.* Review and acceptance of hazard mitigation plans submitted by the applicant or by the State in accordance with the Federal/State Agreement provides the Governor's Authorized Representative in coordination with the Regional Director opportunities to schedule spot inspections, audits, and follow-up consultations. Through these activities, compliance with hazard mitigation objectives, schedules, and commitments may be verified.

(c) *Project Administration.* As a condition for approval of a project application, and subsequently for approval of a voucher for final payment, the Governor's Authorized Representative and the Regional Director shall require documentation of required hazard mitigation measures, including compliance with applicable land use regulations or construction standards. In making Final Inspection Reports, Federal and State inspectors shall be specifically asked to verify compliance by the applicant with approved hazard mitigation standards. Similarly, auditors shall be required to verify such compliance in their audit reports.

(d) *Reporting.* The Regional Director may specify in the Federal/State Agreement that the State provide reports of compliance with approved hazard mitigation plans or actions. The Governor's Authorized Representative may also require such progress reports from each applicant or he/she may submit one comprehensive report when scheduled. Prior to termination of the Federal/State Agreement, the Governor's Authorized Representative shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance.

§ 205.411 Evaluation.

(a) *Critiques.* If requested by the Regional Director, the Governor's Authorized Representative shall arrange for a special critique of hazard mitigation plans and actions as the result of the major disaster or emergency. Each applicant shall be notified of the critique and may be invited to participate. As an alternative, a critique of hazard mitigation plans and actions may be scheduled to be covered at the FEMA/State critique covering all disaster assistance activities as the result of the major disaster or emergency.

(b) *Final survey team report.* Prior to terminating the survey team activities, the FEMA HMC and State HMC shall prepare a joint report of their activities and recommendations to the Governor's Authorized Representative and to the Regional Director.

(c) *Final planning team report.* Upon completion of its assigned mission, as discussed in 44 CFR 205.405, the FEMA/State planning team shall make a final report of its activities, findings and recommendations to the Regional Director through the Governor's Authorized Representative. This final report shall specifically identify any remaining planning requirements for hazard mitigation as the result of the major disaster or emergency requiring State or FEMA followup.

(d) *Follow-up actions.* The Regional Director shall review the reports from the survey team and the planning team plus the report of compliance from the Governor's Authorized Representative. The Regional Director's report to the Associate Director shall focus on the positive results achieved through hazard mitigation plans and actions as the result of the major disaster or emergency. He/She also shall provide in the report specific findings and recommendations for Federal follow-up action which should be taken after termination of the Federal/State Agreement to provide mitigation of such hazards as the result of future disasters. The Associate Director may then arrange for appropriate Federal action as the result of each such recommendation.

PART 206—TEMPORARY HOUSING PRE-TERMINATION PROCEDURE

Sec.
206.1 Purpose.
206.2 Termination of benefits.
206.3 Administrative procedure prior to hearing.
206.4 Request for hearing.
206.5 Hearing panel.
206.6 Hearing.
206.7 Decision.
206.8 Appeal from decision.
206.9 Notice to vacate premises.
206.10 Termination of assistance.

AUTHORITY: Sec. 601 of the Disaster Relief Act of 1974, (42 U.S.C. 5201).

SOURCE: 44 FR 75576, Dec. 20, 1979, unless otherwise noted.

§ 206.1 Purpose.

The purpose of this part is to prescribe a pre-termination hearing procedure to be followed by the Federal Emergency Management Agency (FEMA) regarding termination of assistance for, or eviction from, temporary housing provided under the Disaster Relief Act of 1974 (the "Act") as a result of a major disaster. This procedure is applicable to any dispute with respect to action terminating assistance for, or evicting a tenant from, such temporary housing, and is available to any tenant (including an occupant) of such housing who is or may be adversely affected by the action.

§ 206.2 Termination of benefits.

Written notice shall be delivered to the tenants at least 30 days prior to the proposed termination by FEMA of assistance for or eviction by FEMA from temporary housing, specifying the reasons for termination of assistance of tenancy; the date of termination, which shall be not less than 30 days after receipt of the notice; and the administrative procedure available to the tenant if he/she wishes to dispute the action.

§ 206.3 Administrative procedure prior to hearing.

(a) *Filing of complaint.* If the tenant desires to dispute the termination, upon receipt of the written notice specified in § 206.2 he shall present his complaint in writing to the appropriate FEMA office in person or by mail within five business days or such additional time as FEMA may for good cause allow. The complaint must be signed by the tenant and give the reasons or grounds why the assistance or tenancy should not be terminated and for any other action requested.

(b) *Informal conference.* The appropriate FEMA official shall, immediately upon receipt of complaint, attempt to arrange an informal conference with the complaining tenant in an effort to settle the matter without a hearing. Whether or not the matter is settled by an information conference, an answer in writing to each complaint, dated and signed by the appropriate FEMA official, shall be delivered or mailed to the complainant within five business days after receipt of the complaint or such additional time as FEMA may for good cause allow. The answer shall specify the determination which has been made, based on consideration of the information in the complaint and/or provided at any informal conference, and the specific reasons for the determination. If the determination is made to terminate the assistance or the tenancy, the tenant shall be advised in writing of his right to request a hearing on the matter within ten business days after receipt of the determination and of the procedure for obtaining such a hearing.

§ 206.4 Request for hearing.

If the tenant desires to dispute any determination made under § 206.3, he/she may submit in writing a request for a hearing to the appropriate FEMA office in person or by mail within ten business days after receipt of the determination. A hearing date shall be scheduled promptly for a time and place reasonably convenient to the complaining tenant who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

§ 206.5 Hearing panel.

(a) The Hearing Panel shall consist of three members: One tenant member, one member representing FEMA, and one impartial and disinterested member (together with an alternate) who shall be chosen by the other two Hearing Panel members. Relatives of the complaining tenant, and officials and employees of FEMA whose duties or responsibilities have involved them in any way with the complaint, shall not be eligible to serve on the Panel. The impartial and disinterested member of the Panel shall not be an official or employee of the FEMA office in which the complaint originated or a tenant receiving temporary housing assistance under the Act. In the event that the two Hearing Panel members cannot agree on the third impartial member, the third member shall be appointed by the Commercial Arbitration Tribunal of the American Arbitration Association.

(b) In the event that no tenant is available for selection as a member of the Hearing Panel in accordance with these regulations, then the hearing shall be conducted by a single impartial and disinterested Hearing Officer appointed in the same manner as provided in § 206.5(a) for appointment of the impartial member of a Hearing Panel.

§ 206.6 Hearing.

(a) *Due process requirement.* The complaining tenant shall be afforded a fair hearing providing the basic safeguards of due process before the Hearing Panel and may be represented by counsel or another person chosen as his/her representative. The hearing shall be private unless the complainant requests and the Hearing Panel agrees to a public hearing. This restriction shall not be construed to limit the attendance of persons with a valid interest in the proceedings.

(b) *Availability of documents.* The complainant may examine before the hearing and, at his/her expense, copy all documents and records of the appropriate FEMA office that are relevant to the hearing. Any document not made available, after request therefor by the complainant, may not be relied on by FEMA at the hearing. The complainant may request in advance and at his/her expense a transcript of the hearing.

(c) *Deposit of rentals and other charges.* If the dispute involves rentals or other charges which FEMA claims are due, the complainant shall deposit the amount in dispute in an escrow account before a hearing is scheduled. This requirement may be waived by FEMA in extenuating circumstances. Failure to make such deposit shall not constitute a waiver of complainnant's right to contest FEMA's disposition of his/her complaint in an appropriate judicial proceeding.

(d) *Failure to appear.* If a complainant fails to appear at a hearing, the Hearing Panel may postpone the hearing for not to exceed five business days or make a determination that complainant has waived his/her right to a hearing. Such determination shall not constitute a waiver of complainant's right to contest FEMA's disposition of his/her complaint in an appropriate judicial proceeding.

(e) *Proof.* At the hearing, the complainant must first make a prima facie case; thereafter, FEMA must sustain the burden of proof in justifying the action against which the complaint is directed. The complainant shall have the right to present evidence and arguments in support of his/her complaint, to controvert evidence relied on by FEMA, and to confront in a reasonable manner and cross-examine all witnesses on whose testimony or information FEMA relies. Hearings shall be conducted informally by the Hearing Panel and any oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to its admissibility under rules of evidence employed in judicial proceedings.

§ 206.7 Decision.

The decision of the Hearing Panel shall be based solely and exclusively upon facts presented at the hearing and upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Panel shall prepare a written decision setting forth a statement of findings and conclusions, together with the reasons or basis therefor, upon all material issues raised by the parties, within five business days after the hearing, or such additional time as FEMA may for good cause allow. The decision of the Hearing Panel shall be binding on FEMA which shall take all actions necessary to carry out the decision or refrain from any action prohibited by the decision unless the FEMA General Counsel determines and notifies the complainant in writing within 30 days, or such additional time as FEMA may for good cause allow, that the decision of the Hearing Panel is not legally supportable. Any such decision of the FEMA General Counsel may be judicially reviewed.

§ 206.8 Appeal from decision.

A decision by the Hearing Panel in favor of FEMA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, rights he/she may have to a trial de novo in judicial proceedings which may thereafter be brought in the matter. In such judicial proceedings, FEMA shall, by stipulation or other appropriate means, be limited to invoking against the complainant grounds originally relied on by FEMA in its proposed disposition of the complaint, but may respond to any new matters raised by the complainant.

§ 206.9 Notice to vacate premises.

If the tenant has requested a hearing on a notice of termination of tenancy pursuant to § 206.2 and the Hearing Panel upholds FEMA's decision to evict, an action to regain possession may not be commenced until the tenant's right to use and occupancy of the premises has been terminated by lawful written notice. Such notice to vacate may not be given prior to the date on which the Hearing Panel's decision is delivered or mailed to the tenant. In no case may eviction occur prior to the termination date stated in the original notice of termination of tenancy. When such notice to vacate is given to the tenant, he/she must be informed in writing that, if he/she fails to quit the premises within three days, appropriate action will be brought against him/her and that if suit is brought against him/her, he/she may be required to pay court costs and attorney fees. If the tenant elects to contest the legal action, FEMA must establish that the reasons on which it relied in the administrative proceedings constitute good cause for eviction under applicable laws and regulations.

§ 206.10 Termination of assistance.

If the Hearing Panel upholds FEMA's decision to terminate assistance for temporary housing, such assistance may be terminated in accordance with the original notice given pursuant to § 206.2 at any time after the 30 days specified in the original notice have elapsed.

PARTS 207–299—[RESERVED]

SUBCHAPTER E—PREPAREDNESS

NOTE: Nomenclature changes to Subchapter E appear at 44 FR 56173, Sept. 28, 1979, and 46 FR 47455, Sept. 28, 1981.

PART 300—DISASTER PREPAREDNESS ASSISTANCE

Sec.
300.1 General.
300.2 Definitions.
300.3 Federal Disaster Preparedness Program.
300.4 Technical assistance.
300.5 Financial assistance.
300.6 Earthquake and hurricane plans and preparedness.

AUTHORITY: Sec. 201, 601, Disaster Relief Act of 1974, (42 U.S.C. 5131; 5201), Executive Order 12148 of July 20, 1979. 44 FR 43239, unless otherwise noted.

SOURCE: 45 FR 13464, Feb. 29, 1980, unless otherwise noted.

§ 300.1 General.

(a) The purpose of this part is to prescribe the standards and procedures to be followed in implementing Pub. L. 93-288 Title II—Disaster Preparedness Assistance, section 201, Federal and State Disaster Preparedness Programs.

(b) The disaster preparedness program shall be carried out in accordance with the policies set forth in § 205.3 of this chapter and the following objectives:

(1) To prepare for the efficient and expeditious provision of disaster relief.

(2) To mitigate potential disaster effects on persons and property through warning, evacuation, and emergency protective measures.

(3) To reduce the effects of hazards through effective land use and construction practices, appropriate legislation and enforcement, dissemination of disaster-related information, and elimination or lessening of disaster-producing events.

§ 300.2 Definitions.

As used in this part:

(a) "The Act" means the Disaster Relief Act of 1974, as amended (Pub. L. 93-288).

(b) "Disaster preparedness plans" means those plans prepared by Federal, State, and local governments in advance of anticipated disasters for the purpose of assuring effective management and delivery of aid to disaster victims, and providing for disaster mitigation, warning, rehabilitation, and recovery.

(c) "State disaster preparedness coordinator" means the person designated by the Governor or by State law as responsible for overall disaster preparedness program coordination or management.

(d) "Vulnerability analysis" means a systematic investigation of potential disasters in terms of probability, frequency, magnitude, and location, in order to forecast their probable effects, in specific geographical areas, on the people, systems, facilities, resources, and institutions.

§ 300.3 Federal disaster preparedness program.

(a) The Director is authorized to establish a program of disaster preparedness that utilizes the services of all appropriate agencies and to provide overall management of that program by:

(1) Providing policy guidance to Federal agencies and conducting program reviews of Federal activities relating to disaster preparedness.

(2) Directing the preparation and review of Federal disaster preparedness plans.

(3) Determining goals and arranging for training of Federal and State personnel, and conducting exercises, critiques, and evaluations to enhance disaster preparedness programs.

(4) Sponsoring and monitoring disaster-related research and the application of science and technology to Federal, State, and local disaster preparedness plans and programs.

(5) Encouraging participation in disaster mitigation and recovery programs by Federal agencies, State and local governments, the practicing professions, research and academic institutions, voluntary agencies, the business community, civic and other organizations, and individuals.

(b) The Director has delegated this authority to the Associate Director, State and Local Programs and Support primarily, to the Regional Directors within their respective Regions, and to other officers of the Agency regarding specific program elements appropriate to their responsibilities.

(c) The Regional Director shall establish a regional program of disaster preparedness that is consistent with the overall national program and with the State programs within the region and shall manage that regional program by:

(1) Reviewing Federal agency, State, and local disaster preparedness and response activities and recommending improvements.

(2) Assisting the States in accordance with the Act and these regulations.

(3) Coordinating the disaster preparedness programs of Federal agencies within the region.

(4) Preparing plans and conducting training, exercises, critiques, and evaluations to enhance Federal agencies' preparedness for disaster assistance; arranging for and carrying out such activities in conjunction with the States to ensure coordinated Federal, State, and local response to disasters.

§ 300.4 Technical assistance.

(a) The Regional Director shall, upon request, provide technical assistance to the States, in accordance with the objectives specified in § 300.1(b) of these regulations, for comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation and for assistance to individuals, businesses, and State and local governments following such disasters.

(b) Particular emphasis shall be given to technical assistance in the following aspects of disaster preparedness:

(1) The drafting of disaster-related State legislation and executive authorities.

(2) Vulnerability analyses.

(3) Work plans and other documentation for disaster preparedness grants.

(4) State and local disaster preparedness programs and procedures.

(5) Staff training, workshops, and seminars.

(6) Disaster assistance exercises.

(7) Program evaluation.

(8) Public information and education programs.

(9) Application of technological information to the disaster preparedness program.

(c) The Regional Director shall also advise the States regarding complementary Federal programs that will enhance State and local disaster assistance and preparedness.

(d) Requests for technical assistance under section 201(b) of the Act shall be made by the Governor or the State disaster preparedness coordinator to the Regional Director.

(1) The request for technical assistance shall indicate as specifically as possible the objectives, nature, and duration of the requested assistance; the recipient agency or organization within the State; the State official responsible for utilizing such assistance; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(2) The State shall provide assurance that technical assistance does not duplicate any existing State capability, any State or local effort funded by the Federal Government, or any Federal assistance provided under other authority.

(e) Nothing in this part shall be construed to prevent the States from obtaining appropriate technical assistance from other sources, including other Federal agencies under such agencies' own statutory or delegated authorities.

§ 300.5 Financial assistance.

(a) Each State (as defined in the Act) except the Canal Zone requested and received an initial development grant of up to $250,000 for the development of plans, programs, and capabilities for disaster preparedness and prevention. All of these grants have been completed.

(b) The Regional Director may provide to the States, in accordance with the objectives specified in § 300.1(b) of these regulations, upon written request by the Governor or an authorized representative, an annual improvement grant of up to $25,000 but not to exceed 50 percent of eligible costs. The nonfederal share may exceed the Federal share.

(c) "Annual" improvement grant means that the State may receive no more than $25,000 in actual reimbursements during any continuous 12-month period.

(1) Each grant, even though received annually, is a new grant, subject to all the requirements of a new grant. It is not a renewal of or an amendment to that of the preceding year.

(2) An improvement grant normally will have a one-year duration to be succeeded by a new grant without a break in time, in the interest of program and management continuity. A one-year length is not a requirement, however; nor is continuous funding. There can be a hiatus between grant periods, grants may be for more or less than a year, or grants can overlap, if the State can justify these procedures.

(d) The required nonfederal share for the improvement grant may be in cash or in kind.

(1) State or local revenue-sharing funds may be used for the nonfederal share, as may, within certain limits, funds of Federal-State Regional Commissions; these are exceptions to the prohibition against matching Federal funds with Federal funds. Any nonfederal funds may also be used for this share.

(2) The nonfederal share may be wholly or partially in kind. Forms of in-kind contribution may include, for example, salaries and expenses of State or local personnel, rentals, prorata cost of facilities and equipment, and services, provided these costs are not claimed for reimbursement and are not charged as indirect costs to the grant.

(3) Federal funds match the total State expenditure (up to the allowable maximum), not item-by-item costs. Reimbursements are made only for actual eligible expenditures, not for obligations incurred by the State.

(e) The following minimum requirements shall apply to each improvement grant, to the extent considered by the Regional Director as necessary to the State's disaster preparedness capability.

(1) The State shall maintain a current State emergency plan for implementation as required by Section 301(b) of the Act.

(2) The State shall take into account the kinds of disasters to which it is most vulnerable and the particular requirements therefrom for disaster response and mitigation.

(3) State guidance and assistance shall be provided to local jurisdictions in the development of their disaster preparedness plans, programs, and capabilities.

(4) The State emergency plan shall incorporate appropriate policies and procedures pertaining to environmental clearance to assure State and local compliance with applicable Federal, State, and local laws and regulations.

(f) The improvement grant may apply to such preparedness programs and capabilities as:

(1) Planning for disaster response in general, for specific disaster contingencies in special locales, for local and area mutual emergency support under State sponsorship, for long-range recovery, and for disaster mitigation and hazard reduction.

(2) Revision, as necessary, of State legislation, implementating orders, regulations, and other authorities and assignments relevant to disaster preparedness and assistance.

(3) Disaster-related mutual aid compacts and agreements.

(4) Conduct of vulnerability analyses not otherwise available but necessary for the development of State and local disaster preparedness plans and programs.

(5) Design of disaster-related emergency systems.

(6) Training and exercises.

(7) Program reviews and postdisaster critiques.

(8) Public information and education programs.

(g) The improvement grant shall be product-oriented; that is, it must produce something measurable in some way so as to determine specific results, to substantiate compliance with the grant work-plan objectives, and to evidence contribution to the State's disaster capability.

(h) The Regional Director shall approve all costs claimed for reimbursement on the basis of their reasonableness and necessity for the efficient administration of the grant program; however—

(1) Federal funds provided to the State, or through the State to local government, under the provisions of section 201 of the Act may not be used to procure or repair equipment, materials, or facilities except that required for administration of the grant;

(2) Out-of-State travel may not be charged to the grant without prior approval of the Regional Director; and

(3) Travel and other costs for participation in conferences, training and similar activities, whether or not provided for in the grant work plan, shall be eligible only if clearly beneficial to the grant program.

(i) All grants under section 201 of the Act are subject to the appropriate provisions of OMB Circular No. A-95 Revised, Evaluation, review and coordination of Federal and federally assisted programs and projects (January 2, 1976); GSA Federal Management Circular No. 74-4, Cost Principles applicable to grants and contracts with State and local governments (issued July 18, 1974); and OMB Circular No. A-102 Revised, Uniform administrative requirements for grants-in-aid to State and local governments (August 24, 1977). In accordance with these requirements the following provisions shall also apply:

(1) Applications for improvement grants shall be processed through the State clearinghouse in compliance with Circular No. A-95 Revised before submittal to the Regional Director.

(2) The submitted application shall include, in an original and two copies:

(i) Standard Form 424, Application for Federal Assistance, indicating the amount requested and the nonfederal share, the grant starting date and duration, certification of A-95 clearance, and the designated agency to carry out or manage the improvement effort. This agency should be the one most appropriate for the work to be accomplished and need not be that designated previously for the development grant.

(ii) A budget estimate; the Budget Information form in Circular A-102 Revised, Attachment M, should be used.

(iii) A work plan setting forth those elements of the comprehensive and detailed program that are to be improved under this grant and any additional or subordinate plans or other products or activities to be developed for specific contingencies or disaster functions in accordance with the State's disaster preparedness program. Even though the grant is to cover only one year, the work plan may, to indicate continuity of intended effort, cover a multi-year period, especially if the work to be performed in that year is part of a longer-range project.

(iv) Assurance of compliance with applicable laws and regulations. Inclusion of a standard "assurances" sheet available from the Regional Director or adapted from A-102 Revised, Attachment M, is sufficient.

(v) Any pertinent comments received and provided by the State clearinghouse in the A-95 procedure.

(3) The Regional Director has been delegated full authority, within these regulations and other policy and procedural instructions as the Director, Federal Emergency Management Agency or the Associate Director, State and Local Programs and Support, may from time to time provide, to approve or reject improvement grant applications and to award or amend the grants.

(i) Upon approval, the Regional Director shall complete Section III of SF 424 and provide copies to the State for the designated agency, the State clearinghouse, and (if different) the State Central Information Reception Agency (SCIRA).

(ii) In approving a grant, the Regional Director may attach special conditions, if deemed necessary, to ensure compliance with the grant requirements. It shall be standard practice for the Regional Director to review these with the concerned State officials in advance of approval. Formal acceptance of these conditions is provided in the "assurances" sheet submitted as part of the application package.

(4) A grant application may be amended at any time prior to the scheduled completion of work under the grant if warranted on the basis of new requirements, changes in Federal or State statutes or other legal authorities, or other sufficient reason: *Provided*, Such proposed modifications are mutually agreed upon by the Governor or an authorized representative and by the Regional Director. The addition of new work projects may require further A-95 clearance.

(5) At the request of the State through Standard Form 270, the Regional Director may approve an advance of funds not to exceed the Federal share of the first 90 days' estimated operational expenses.

(6) The State shall provide quarterly performance reports to the Regional Director. Reporting shall be by program quarter unless otherwise agreed to by the Regional Director.

(7) To the extent feasible, the State shall submit at least two copies of each grant product to the Regional Director. The Regional Director's acceptance of a grant product as fulfilling the terms of the grant should not be construed as approval of or concurrence with the content of the product as to its quality.

(8) In addition to reviews of specific products, the Regional Director shall review grant performance at least quarterly, in such manner as the Regional Director may determine. If review findings clearly indicate a failure to meet the terms of the grant, the Regional Director shall take appropriate action with the State to rectify the problem or, if necessary, shall suspend all or part of an amount claimed for payment or even the grant itself.

(9) The State shall submit to the Regional Director claims for reimbursement at least quarterly but not more often than monthly, on Standard Form 270, signed by the State disaster preparedness coordinator or other authorized representative. Payment shall be made within 30 days after receipt of a properly executed request for payment (except for final payment, which may be withheld pending audit).

(10) The State shall conduct a final audit of each grant to determine, as a minimum, the fiscal integrity of financial transactions and reports, and compliance with laws, regulations, and administrative requirements. The State shall schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size, and complexity of the activity. Federal audits shall be conducted only at the request of the Regional Director or the Associate Director, State and Local Programs and Support.

(Sec. 201, Disaster Relief Act of 1974, as amended, Pub. L. 93-288; Reorganization Plan No. 3 of 1978 (43 FR 41943); and Executive Order 12148 (44 FR 43239))

§ 300.6 Earthquake and hurricane plans and preparedness.

(a) The objective of the program is to prepare special or additional plans and develop capabilities, at all levels of government for achieving integrated response to the threat or consequences of severe earthquakes or hurricanes in high-risk, high-population areas, to the extent regular emergency preparedness measures are insufficient for these contingencies.

(b) The program is normally funded by project grants. When appropriate, certain projects may be financed through cooperative agreements or contracts, pursuant to the definitions set forth in 41 CFR 49-1.50.

(c) Funding may cover all or any part of the cost of the project. Normally a vulnerability analysis will be completed, after which appropriate contingency planning will be initiated. The basic information developed by the vulnerability analysis provides the direction and parameters needed by decisionmakers and operations personnel in their planning. The vulnerability analysis may address such earthquake-related or hurricane-related activities as determination and definition of the hazard area, identification of seismic or storm-surge risks, estimation of casualties and structural damage, and postulated impact on essential operations, population, and resources. Contingency planning efforts may include developing or improving unique, special or extraordinary protective, relief, long-range recovery, and mitigation measures. Consideration will be given to studies or plans for earthquake or hurricane caused catastrophes such as landslides, dam ruptures, flooding, subsidence or hazardous-materials releases. Grants for the vulnerability analysis and for contingency planning may be awarded separately or combined.

(d) Grants are awarded on the basis of the best accepted, scientifically credible state-of-the-art threat assessment using population-at-risk, potential loss of life, property damage, and probability for the maximum credible event (earthquakes, hurricanes, or related phenomena). Priority is given to areas, as determined by FEMA, on the basis of the existing data and expert consultation cited above. Other considerations for award should be inclusion in the work plan of mechanisms for participation by practicing professions, voluntary agencies, academic groups, commercial interests, and the public at large. Further, the affected jurisdiction(s) should provide tangible proof of their interest in undertaking the preparedness effort as evidenced by assignment of resources to the project.

(1) The following earthquake areas are identified: San Francisco, Los Angeles/San Diego, Puget Sound, Salt Lake City, Anchorage, Honolulu, Boston, Charleston (SC), Central United States, Upper New York State, and Puerto Rico (studies or plans for some of which have already been funded).

(2) The following hurricane areas are identified: Corpus Christi, Galveston/Houston, New Orleans, Tampa Bay, Miami/Miami Beach, Savannah, Charleston (SC), Chesapeake Bay, Long Island/New Jersey Barrier Coast, Matagorda (TX), Sabine Lake (TX-LA), Mobile, the Mississippi Gulf Coast, the Florida Keys, Lake Okeechobee, Pamlico Sound, Delaware Bay/Coast, Buzzards Bay/Cape Cod, Puerto Rico, Virgin Islands, Hawaii, Guam, Samoa, and the Trust Territories.

(3) The lists contained in paragraphs (d) (1) and (2) of this section are not all inclusive nor exclusive. They appear as examples and are dynamic. Consideration for these and other areas will be in accordance with the criteria listed in paragraph (d) of this section.

(e) The grant (or a cooperative agreement or contract, if more appropriate) would usually be to a State—as defined by the Disaster Relief Act of 1974—but could be to a combination of substate jurisdictions or an interstate consortium. FEMA may, if it determines appropriate, arrange for a vulnerability analysis to be performed under a procurement contract or an interagency agreement.

(f) Grants are discretionary and thus must be approved by the Director or the Director's designee (the Office of the Comptroller) or, upon delegation of approval authority, by the Regional Director. Unless otherwise stipulated, funding will be managed and projects monitored and reviewed by the cognizant FEMA Regional Office.

(g) A preapplication conference with involvement of affected State agencies, local governments, and the cognizant Regional Office is needed to review and discuss the grant Work Plan in draft. FEMA technical assistance is available for application preparation.

(h) A grant request must be in writing from the Governor or Governor's authorized representative to the appropriate Regional Director. Unless otherwise indicated herein, application, reimbursement, reporting, and auditing procedures shall follow the same guidelines as set forth in § 300.5 (h) and (i) of these regulations and in other applicable Federal regulations.

[46 FR 47455, Sept. 28, 1981]

PART 301—CONTRIBUTIONS FOR CIVIL DEFENSE EQUIPMENT

Sec.
301.1 Purpose.
301.2 Definitions.

Sec.
301.3 Project applications.
301.4 Conditions of contributions.
301.5 [Reserved]
301.6 Billing and payment.
301.7 Advances of Federal funds.
301.8 Limitations on amount and obligation of Federal funds.
301.9 Procurement.
301.10 [Reserved]
301.11 Compliance.

AUTHORITY: Secs. 201(i) and 401 of the Federal Civil Defense Act of 1950, 64 Stat. 1245-1257, as amended, 50 U.S.C. App. 2251-2297; Reorg. Plan No. 1 of 1958, 72 Stat. 1799, 23 FR 4991; E.O. 10952, 26 FR 6577; 3 CFR, 1959-1963 Comp., p. 479; 29 FR 5017, Apr. 10, 1964; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

SOURCE: 29 FR 1322, Jan. 25, 1964, unless otherwise noted. Redesignated at 29 FR 6384, May 15, 1964 and 44 FR 56173, Sept. 28, 1979.

NOTE: Nomenclature change appears at 38 FR 16775, June 26, 1973.

§ 301.1 Purpose.

The purpose of the regulations in this part is to prescribe the basic terms and conditions under which the FEMA, pursuant to the provisions of section 201(i) of the Act, contributes Federal funds to the States for the procurement of civil defense equipment.

§ 301.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251-2297).

(b) *Allowable costs.* Except where Federal assistance for such costs is restricted or prohibited by law, the cost principles set forth in attachment H of CPG 1-3, as required by FMC 74-4 (41 CFR Subpart 1-15.7) apply in determining allowability and allocability of costs incurred by States and their political subdivisions. Costs which are allowable only with the approval of the grantor agency are allowable only to the extent so provided in CPG 1-3. No cost is allowable unless it is required to meet civil defense needs determined in accordance with the provisions of CPG 1-3.

(c) *Civil defense equipment.* Facilities, materials, and organizational equipment for which the FEMA approves financial contributions under section 201(i) of the act.

(d) *CPG 1-3.* FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1-3 as amended by numbered changes thereto and by Civil Preparedness Circulars (CPC) as provided in 32 CFR 1800.20 (42 FR 34880).

(e) *FEMA.* Federal Emergency Management Agency. Where action is to be taken, this term denotes the Director or other duly authorized official(s) acting under the authority delegated.

(f) *Facilities.* Buildings, shelters, and utilities, exclusive of land.

(g) *Grantee.* A State, and where applicable, a political subdivision joining in the State's application, which holds a FEMA-approved project application for Federal financial assistance under section 201(i) of the act, which has not been closed out by completion or termination under FEMA procedures set forth in CPG 1-3.

(h) *Materials.* All materials, supplies, medicines, equipment, component parts, and technical information (including training courses) and processes necessary for civil defense.

(i) *Organizational equipment.* Equipment (other than materials and facilities) determined by the FEMA to be (1) necessary to a civil defense organization, as distinguished from personal equipment, and (2) of such type or nature as to require it to be financed in whole or in part by the Federal Government. It shall not be construed to include those items which the local community normally utilizes in combating local disasters except when required in unusual quantities dictated by the requirement of the civil defense plans.

(j) *Program.* A course of action adopted by a State (or political subdivision) in a specific civil defense area of activity.

(k) *Project.* A definable part of a program which is complete in itself.

(l) *State.* Any of the several States; the District of Columbia; the Commonwealth of Puerto Rico; the Government of the Northern Mariana Islands; the territories of American

Samoa, Guam, and the Virgin Islands; and interstate civil defense authorities established by interstate compact pursuant to section 201(g) of the act.

[43 FR 25093, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 44 FR 62517, Oct. 31, 1979]

§ 301.3 Project applications.

(a) *Forms and assurances.* A request for a Federal financial contribution shall be made on a FEMA-prescribed project application form conforming to the requirements of attachment M of OMB Circular No. A-102, and, in addition to acknowledgement of the applicant's receipt of a copy of CPG 1-3 shall contain assurances of and agreement for compliance with the regulations, policies, guidelines and requirements of FEMA regulations in Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations, CPG 1-3, FMC 74-4 (41 CFR subpart 1-15.7) and OMB Circular No. A-102.

(b) *Scope.* The project application should cover a definable civil defense purpose, complete in itself. Although explanatory information for cost estimate purposes must be detailed, applicants are to define the project in terms of civil defense measures to be undertaken rather than as a shopping list for purchase. For example, in terms of providing a civil defense warning system for a given geographical area's population, the specific number and types of sirens and other equipment expected to be required would be indicated as background information for the budget summary.

(c) *Signature.* The project application must be signed by an authorized official of the State and in the case of a political subdivision joining the State in its application, also by an authorized official of such political subdivision. Except as otherwise required by law, no authorized official will be required to sign the same project application more than once. However, should changes in the scope of the project, the applicable terms and conditions, or the amount of funding be requested, an authorized official representing each applicant may be required to sign a revision or an addendum on the same form as the original, but no applicant shall be required to provide information which was previously provided in the original application.

(d) *Procedures.* Procedures for the processing of project applications are set forth in CPG 1-3. They include provisions for informing the applicant of the basis for any rejection of its application.

(e) *Deadlines.* Project applications, addenda thereto, revised applications, and requests for changes or supplements to approved grants must be timed to accommodate fiscal year limitations on the obligation of Federal funds. (See § 301.8 of this part.)

(f) *Construction projects.* Project applications for all grants where a major portion of the project involves construction work must be submitted on a FEMA prescribed project application form conforming to the requirements of attachment M of OMB Circular No. A-102 pertaining to application for Federal assistance for construction programs, and the project must be carried out in accordance with the applicable requirements of FEMA regulations for federally assisted construction set forth in Part 309 of this chapter. Some examples of projects where a major portion normally would be considered to involve construction work are those for incorporting an emergency operating center in the construction of a new public building, the modification of a portion of an existing public building for use as an emergency operating center, the erection of antenna towers for a civil defense communications system, the erection of towers or poles for sirens for use in a civil defense warning system, and the installation of an emergency generator for civil defense use.

(g) *Appeals.* Upon rejection of a project application by the Regional Director, FEMA on a basis other than a lack of available funding, the applicant may appeal to the Director, FEMA, under procedures set forth in CPG 1-3.

[43 FR 25093, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.4 Conditions of contributions.

FEMA contributions for civil defense equipment costs are subject to the following conditions:

(a) *Certification.* The making of a request for a contribution shall constitute a certification by the State (and political subdivision, where applicable) that the State's matching share is available or will be available before Federal funds are disbursed; that the civil defense equipment, regarding which a contribution is requested, is needed by the applicant over and above its other-than-civil defense needs, in order to meet its requirements under civil defense operational plans approved by FEMA (local plans are approved as part of the State plans); and that the State (and political subdivision, where applicable) will comply with the policies, guidelines and requirement contained in the Assurances section of the project application, including without limitation, FEMA regulations (Code of Federal Regulations, Title 44, Chapter I—Federal Emergency Management Agency, Subchapter E) and with criteria and procedures set forth in CPG 1-3.

(b) *Standards and specifications.* Civil defense equipment procured by the State (or political subdivision) must meet such FEMA-prescribed minimum standards and specifications as are set forth in CPG 1-3 or other FEMA guidance material referenced therein. Application of such standards and specifications to unique installation or uses of equipment shall be as determined by FEMA following receipt of full information in accordance with procedures set forth in CPG 1-3.

(c) *Financial management*—(1) *System.* Grantees shall establish and maintain a financial management system in conformity with the standards set forth in appendix C of CPG 1-3 as required by attachment G of OMB Circular No. A-102.

(2) *Reporting.* Grantees shall comply with the uniform financial reporting requirements set forth in section 2 of chapter 3 of CPG 1-3, as required by attachment H of OMB Circular No. A-102.

(d) *Property management*—(1) *Standards.* Grantees shall comply with the standards set forth in appendix D of CPG 1-3, as required by attachment N of OMB Circular No. A-102, governing the utilization and disposition of property which has been furnished by the Federal Government, acquired in whole or in part with Federal funds, or whose cost has been charged to a project supported by a Federal grant.

(2) *Release of Federal interest.* As to the requirement under appendix D of CPG 1-3 (attachment N of OMB Circular No. A-102) for payment to FEMA of an amount equal to the Federal share of its fair market value prior to disposal or other than authorized use of an item of nonexpendable personal property procured by a political subdivision at a unit acquisition cost of $1,000 or more, where guaranty by the State of such payment to FEMA is not permissible under State law, the guaranty by the State, as joint applicant with its political subdivision shall be limited to an amount not to exceed the amount of the Federal contribution paid by FEMA toward procurement of the particular item of property.

(3) *Use.* With regard to application of the property management standards set forth in appendix D of CPG 1-3, "purpose of the grant program," includes use for providing emergency assistance in any area of the United States which suffers a disaster other than a disaster caused by enemy attack. Detailed guidance is set forth in CPG 1-3.

(e) *Monitoring and reporting program performance.* Grantees shall comply with the provisions set forth in appendix F of CPG 1-3, as required by OMB Circular No. A-102, regarding the monitoring and reporting of grant-supported activities and programs.

(f) *Records retention and availability.* Financial records, supporting documents, and all other records pertinent to a grant shall be retained by the grantee and made available as prescribed by appendix B of CPG 1-3 in accordance with the requirements of OMB Circular No. A-102.

[43 FR 25093, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.5 [Reserved]

§ 301.6 Billing and payment.

When civil defense equipment procured by a State (or political subdivision) has been delivered to the State (or political subdivision), the FEMA, upon the receipt of proper billing, shall make payment, by check drawn against the Treasury of the United States, to the authorized official of the State or political subdivision designated by the State.

[43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.7 Advances of Federal funds.

The State (and where appropriate, the political subdivision) shall submit their requests for advance payment on the "Request for Advance or Reimbursement" form (FEMA Form No. 1406) prescribed in Attachment H of OMB Circular No. A-102. Advances by Treasury check will be made in accordance with the provisions of Treasury Circular No. 1075 and FEMA promulgated guidance material furnished the State and political subdivision; *Provided*, That the State (and where applicable, the political subdivision) has established or demonstrated to FEMA the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the State or political subdivision, as the case may be; and *Provided further*, That the State (and where applicable, its political subdivision) has established a financial management system meeting the standards for fund control and accountability prescribed in Attachment G of OMB Circular No. A-102 "Standards for Grantee Financial Management Systems."

[40 FR 36328, Aug. 20, 1975, as amended at 43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.8 Limitations on amount and obligation of Federal funds.

(a) *Federal-grantee share*. The Federal contribution shall not exceed 50 percent of the total allowable cost of the civil defense equipment. The grantee's share of such cost may be derived from any source it determines consistent with its laws; *Provided, however*, That except as otherwise expressly provided by Federal law, no part of the grantee's share has been or will be derived from Federal funds. No Federal contribution shall be made for the procurement of land. The value of any land contributed to the program or project shall be excluded from the computation of the grantee's share.

(b) *Fiscal year control*. Federal funds are available for obligation under the program in this part on a Federal fiscal year basis (October 1 to September 30, inclusive) and cannot be used to cover obligations incurred or expenditures made by a grantee prior to the date of first availability of the appropriation otherwise remaining available for obligation. With regard to services, such as maintenance and utility services, being rendered over a continuing period of time, contributions shall be only for eligible services required to serve the civil defense needs of the grantee during the Federal fiscal year current at the time the project application is approved by FEMA.

[43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.9 Procurement.

Grantees shall comply with the provisions of Appendix E of CPG 1-3, as required by OMB Circular No. A-102, regarding the procurement of supplies, equipment, construction, and other services with the assistance of Federal funds. Included, without limitation, is a provision that, with certain specified exceptions, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered and FEMA's contribution will be limited to its share of the allowable costs under such lowest acceptable bid.

[43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.10 [Reserved]

§ 301.11 Compliance.

(a) The State (or political subdivision) must be prepared to furnish the FEMA, upon its request, with proper documentation that there has been compliance with the requirements of the regulations in this part and the related procedures and criteria prescribed in CPG 1-3 in connection with its procurement of any item of civil defense equipment and its request and receipt of a Federal contribution therefor.

(b) Where, after reasonable notice to the State and opportunity for hearing in accordance with Part 303 of this chapter, the FEMA finds that the State (or political subdivision) has failed or is failing to expend funds in accordance with the requirements of the Act or the terms and conditions of the regulations in this part, the FEMA may withhold payments of any financial contributions to such State, due or to become due.

[29 FR 1322, Jan. 25, 1964. Redesignated at 29 FR 6384, May 15, 1964, and amended at 43 FR 25094, June 9, 1978. Further redesignated at 44 FR 56173, Sept. 28, 1979]

PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (CONTRIBUTIONS FOR PERSONNEL AND ADMINISTRATIVE EXPENSES)

Sec.

302.1 Purpose.
302.2 Definitions.
302.3 Allocations.
302.4 Reallocations.
302.5 State plans and annual submissions.
302.6 Agreement for contributions.
302.7 Fiscal year limitations.
302.8 Merit personnel systems.
302.9 Use of funds, materials, supplies, equipment and personnel.
302.10 Cost principles.
302.11 Implementation of OMB Circular A-102.
302.12 Other Federal requirements.
302.13 Projects involving construction.

AUTHORITY: Sec. 401, Federal Civil Defense Act of 1950, as amended, 64 Stat. 1255, 50 U.S.C. App. 2253; Reorg. Plan No. 1 of 1958, 72 Stat. 1799, 23 FR 4991, E.O. 10952, 26 FR 6577; 29 FR 5017, Apr. 10, 1964; Reorg. Plan No. 3 of 1978 (43 FR 41943), E.O. 12148 (44 FR 43239), unless otherwise noted.

SOURCE: 45 FR 64914, Oct. 1, 1980, unless otherwise noted.

§ 302.1 Purpose.

(a) The regulations in this part prescribe the requirements for Federal financial contributions to the States and, through the States, to their political subdivisions for necessary and essential States and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essentail planning and other administrative function required in order to accomplish this objective.

§ 302.2 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251-2297).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1-3, including without limitation Appendix P which sets forth the "Cost Principles Applicable to Grants and Contracts with State and Local Governments" as promulgated in FMC 74-4.

(c) *Annual submission.* The State's annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1-3, it includes staffing patterns (including job description changes), budget requirements, any amendments to the State administrative plan, a request for funds covering the State and its subgrantees, and if not previously submitted, program papers for the grantee and subgrantees. Program papers may be submitted separately or as part of the annual submission.

(d) *Approval.* All approvals by the grantor agency required under the regulations in this part means prior approval in writing signed by an authorized official of the grantor agency. When, despite failure to obtain prior approval to an action has not resulted and is not expected to result, in any failure of compliance with a substantive requirement and approval after the fact is not contrary to law or regulation having the effect of law, written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1-3.* Civil Preparedness Guide entitled "Federal Assistance Handbook" which sets forth detailed guidance on procedures which a State and, where applicable, its political subdivision must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms and conditions upon which financial assistance is granted. Included are amendments by numbered changes and by Civil Preparedness Circulars issued by the grantor agency as provided in 44 CFR 310.20. References to CPG 1-3 include provisions of other volumes of the CPG series specifically referenced in CPG 1-3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered from the U.S. Army A.G. Publications Center, Civil Defense Branch, 2800 Eastern Boulevard (Middle River) Baltimore, MD 21220. One or more copies of CPG 1-3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copy of revisions and amendments are distributed to participating governments (addressed to the Civil Defense Director) upon issuance.

(f) *Director.* The Director of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(g) *FMC 74-4.* Federal Management Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and local Governments", codified in the Code of Federal Regulations at 41 CFR Subpart 1-15-7, including amendments or revisions as published in the FEDERAL REGISTER. (See Appendix P of CPG 1-3).

(h) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor agency are identified in CPG 1-3 and may be ordered from the U.S. Army A.G. Publication Center, Civil Defense Branch, 2800 Eastern Blvd. (Middle River) Baltimore, MD 21220.

(i) *Grantee.* A State having a State administrative plan, a program paper, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1-3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(j) *Grantor agency.* The Federal Emergency Management Agency.

(k) *Host area.* An area identified by a State as having a capacity for accommodating people relocated from a risk area, as well as its own population, during a period of international crisis having high potential for nuclear attack.

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and program papers approved by the Regional Director as being consistent with the national plan for civil defense and as meeting other requirements for civil defense plans prescribed by or under provisions of the Federal Civil Defense Act of 1950, as amended.

(n) *OMB Circular A-102.* Uniform administrative requirements for grants-in-aid to State and local governments, promulgated by the Office of

Management and Budget, Executive Office of the President of the United States (42 FR 45828, 9-12-77) including amendments or revisions as published in the FEDERAL REGISTER.

(o) *Operational plans.* Operational plans are part of the State administrative plan. They identify the available personnel, equipment, facilities, supplies, and other resources and provide for coordinated operations to be taken throughout the State in the event of an attack.

(p) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets, Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1-3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered therefor in a Federally approved indirect cost allocation plan.

(q) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships.

(r) *Program papers.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the grantor agency on its prescribed forms which are available through the Regional Directors. (See paragraph (h)(1) of this section).

(s) *Regional Director.* An official of the grantor agency delegated authority to exercise specified functions under the Act, including certain financial contributions program functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR Part 2.

(t) *Risk area.* An area identified by the grantor agency as one which, in the event of nuclear attack, is relatively more likely to experience direct weapons effects (blast heat and initial radiation) or high fallout without blast effects.

(u) *State.* Any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Government of the Northern Mariana Islands, the territories of American Samoa, Guam, and the Virgin Islands, and interstate civil defense authorities.

(v) *State administrative plan.* A one-time submission with periodic amendments to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules plans and procedures, including personnel standards administered on a merit basis, operational plans, travel regulations, indirect cost allocation plans, and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A-102 and such other elements as may be required to determine the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1-3. (Also see § 302.5).

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission as approved by the grantor agency (including any grantor agency approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State.

§ 302.3 Allocation.

(a) The entire amount of the appropriation by the Congress for the purposes of this program for each fiscal year shall be allocated among all the

States by the Director. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) Initial discussion with States will begin with the availability of information concerning the amount of funds included for the program in the President's budget request to Congress. For initial planning purposes only, each State will be informed of a preliminary budget allocation figure by the regional Director.

(c) The first calculation for developing the preliminary budget allocation will be a formula distribution made by applying the following criteria:

(1) There shall be established a basic amount which shall be the same for each State: $25,000.

(2) An additional amount shall be calculated for each State by applying the following percentage formula to the total sum in the appropriation request less the total of the basic amounts established for the States;

(i) One-third weight shall be given to the risk areas, which is measured by the ratio of the risk area population of each State to the national total of such population.

(ii) Two-ninths weight shall be given to the criticality of host areas, which is measured by the ratio of the host area population of each State to the national total of such population.

(iii) One-ninth weight shall be given to population, which is measured by the ratio of the total population of each State to the national population.

(iv) One-third weight shall be given to the state of development as follows:

(A) One-sixth weight shall be given to Nuclear Civil Protection (NCP) complexity factor. It is the ratio of the complexity rating of each State to the sum of such ratings for all States. The factor is a number between 1 and 5 assigned to each State; 1 indicating the least complexity and 5 the greatest. The assigned factors represent largely subjective judgment concerning the relative difficulty likely to be experienced in NCP planning due to the geography, the number of projects, the number of evacuees from outside the State that will have to be hosted, the hosting ratio that will have to be used, and the availability or non-availability of fallout shelter space.

(B) One-sixth weight shall be given to the complexity factor in each State (as compared to the sum for all States) of: shelter plans, direction and control, warning, radiological defense, emergency public information, and emergency services expressed as percent of completion, times the population ratio.

(3) The sum of the basic amount and the additional amount for each State shall constitute its formula distribution.

(d) The formula distribution shall be reviewed and evaluated by the Director for the purpose of arriving at the preliminary budget allocation. In making the review and evaluation the Director shall consider the current situation in the State using the following six factors.

(1) The ability of the State and its subgrantees to expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocation which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(6) Any situation where allocation to the State of an amount approximately equivalent to the basic amount would be disproportionate because the State is sparsely populated.

(e) On or about September 1 of each year, the Director will make a tentative allocation to the States including accommodation for funds from States which have indicated they will not be using the total of the preliminary budget allocation. States can then revise their earlier plans which should more nearly reflect the level of funding expected to become available.

(f) By September 30 (or as soon thereafter as feasible) of each year the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds.

(g) For Federal fiscal year 1981, the Director, giving due regard to the (1) criticality of the target and support areas with respect to the development of the total civil defense readiness of the nation, from the standpoint of the need for maintenance and services to assure operable emergency systems to serve such areas, (2) the relative state of development of emergency readiness of each State, and (3) particular circumstances existing in any State which require a greater or lesser expenditure than usual for maintenance and services for Federal fiscal year 1981 (e.g., damage or breakdown of a major direction and control system or recent completion of a new, relatively maintenance free system) shall allocate among all the States funds equal to the full amount by which the total Federal fiscal year appropriation for 1981 available for allocation under section 205 of the Federal Civil Defense Act of 1950, as amended, exceeds the total FY 1981 formal allocation for Emergency Management Assistance made under this section. The amounts so allocated under this paragraph shall be available only for contribution (50/50 matching) toward costs incurred by State and local governments during Federal fiscal year 1981 for maintenance and services required to assure operationally ready civil defense emergency direction and control systems and warning systems needed in order to be prepared for an attack upon the United States.

(50 U.S.C. App. 2253; Reorg. Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12127, 3-31-79, 44 FR 19367; E.O. 12148, 7-20-79, 44 FR 43239)

[45 FR 64914, Oct. 1, 1980, as amended at 45 FR 74928, Nov. 13, 1980]

§ 302.4 Reallocation.

(a) In the event a State fails to submit (within sixty days after notification of its formal allocation) an annual submission approvable under the criteria prescribed therefor by the regulations in this part and by CPG 1-3, the Director may reallocate that State's share of the funds or portions thereof among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(b) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with the approved annual submission.

§ 302.5 State plans and annual submissions.

In order to be eligible for Federal financial contributions under the regulations in this part, each State must have on file with the grantor agency a current State administrative plan for civil defense and an annual submission (including program papers, if not previously submitted) which have been approved by the Regional Director as being consistent with the national plan for civil defense and as meeting the requirements of the regulations in this part and of CPG 1-3.

(a) *State administrative plans.* (1) Regional Directors are not authorized to approve any State administrative plan unless it meets all of the following criteria:

(i) Provides for and is, pursuant to State law, in effect in all political subdivisions of the State, mandatory on them and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), is administered or supervised by a single State agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, rules and regulations, at the State and local level which establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(ii) Provides that the State shall match (50/50) the financial assistance provided by the Federal government under this part with funds from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(iii) Provides for the development of State and local government civil defense operational plans pursuant to the standards approved by the Director.

(iv) Provides for the employment by the State of a full-time civil defense director or deputy director.

(v) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the administration of the civil defense program, at both the State and local government levels in conformity with the Standards for a Merit System of Personnel Administration, (5 CFR Part 900) which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

(vi) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(vii) Provides that the State shall make such reports (including without limitation, financial reports) in such form and content as the Director may require.

(viii) Provides that the State and all subgrantees shall retain in accordance with Appendix C of CPG 1-3 (also see Attachment C of OMB Circular A-102) and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(ix) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the Federally prescribed Standards promulgated in Appendix G of CPG 1-3, "Standards for Grantee Financial Management Systems" (also see Attachment G of OMB Circular No. A-102).

(x) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and project performance of the State and its subgrantees which meet the Federally prescribed standards promulgated in Appendix I of CPG 1-3 (also see Attachment I of OMB Circular No. A-102).

(xi) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the Federally prescribed standards set forth in Appendix N of CPG 1-3 (also see Attachment N of OMB Circular No. A-102).

(xii) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with Federally prescribed standards set forth in Appendix O of CPG 1-3 (also see Attachment O of OMB Circular A-102).

(xiii) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1-3.

(xiv) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(xv) Contains a Statement of Compliance with grantor agency regulations under Title VI of the Civil Rights Act of 1964 including methods of administration which will be followed in order to conduct the civil defense program in accordance with Title VI of the Civil Rights Act of 1964 and the grantor agency regulations (see 44 CFR Part 307) and CPG 1-9, "Non-Discrimination in Federally Assisted Programs of the Defense Civil Preparedness Agency").

(xvi) Provides for timely submission, to the appropriate Regional Director, of amendments to the administrative plan as necessary to reflect the current laws, regulations, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(xvii) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(2) As a part of its State administrative plan each participating State shall have an emergency operational plan approved by the Regional Director as complying with the criteria therefor set forth in this part and in CPG 1-3, which provides for coordinated actions to be undertaken throughout the State when the attack-caused emergencies occur. Included are the basic operational plans of the State and the operational plans for each department of the State government which has an emergency mission. In addition, each subgrantee shall have a local operational plan which conforms with the criteria therefor set forth in CPG 1-3 and CPG 1-5 "Standards for Local Civil Preparedness" and which has been approved by the chief local executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State's operational plan.

(3) It is not required that the State administrative plan be resubmitted annually. The State shall submit amendments to the State administrative plan as necessary to reflect the current status in accordance with the procedures prescribed in CPG 1-3. Such amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, the changes will have on the continued eligibility of the State and its subgrantees.

(b) *Annual submissions.* In order to participate for a particular Federal fiscal year, each State must, within 60 days of receipt of notice of a formal allocation made pursuant to the criteria set forth in § 302.3 and in accordance with procedures and criteria specified in CPG 1-3 (including the requirement of a 45-day period for comment by the Governor) submit to the Regional Director an approvable annual submission which includes:

(1) A request, on the forms prescribed by the grantor agency (See § 302.2(h)), for a Federal financial contribution in a specified amount for civil defense personnel and administrative expenses;

(2) Unless previously submitted for the particular Federal fiscal year, program papers on forms prescribed by the grantor agency for the State and proposed subgrantees;

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by the grantor agency for the civil defense organizations of the State and proposed subgrantees, and

(4) Any amendments to the State administrative plan required to reflect current status.

(c) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so notify the State in writing. The State administrative plan is one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1-3, or to reflect changes in the State's administrative structure, procedures, criteria, or activities, unless a portion was conditionally approved by the Regional Director as provided for in paragraph (d) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(d) *Disapproval or conditional approval of State administrative plan or annual submission.* If a State's administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and the grantor agency.

(e) *Appeals.* Appeal from a Regional Director's disapproval of a State administrative plan or an annual submission may be made by letter to the Director, signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 15 days after receipt of the notification of disapproval. Failure to timely file its appeal may result in the State's allocation being withdrawn and the proposed funding reallocated by the Director. Upon receipt of such an appeal the Regional Director shall forthwith forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the State in support of its appeal, to the Director for review and determination. The appeal shall contain all of the exceptions being taken by the State, and no exceptions will be determined piecemeal. No portion of the appellant State's allocation will be reallocated pending determination of its appeal by the Director. The State will be notified in writing of the Director's decision, including a statement of the reasons therefor.

§ 302.6 Agreement for contributions.

Approval, pursuant to procedures and criteria described in this part and in CPG 1-3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between the grantor agency and the State as grantee for its participation and that of its subgrantees in the programs of Federal financial contributions (50%) for necessary and essential civil defense personnel and administrative expenses during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1-3 and in other Federally promulgated criteria referenced in this part. Refusal or failure to comply with such requirements and conditions may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received. (See § 302.11(1)(5) and 44 CFR Part 303).

§ 302.7 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission, and each amendment thereto, which results in a change in scope (e.g. an increase in the amount of funds other than a cost overrun) must be approved during the Federal fiscal year for which the funds to be charged were appropriated. Expenses incurred by a State or its subgrantee prior to the availability of the current Federal appropriation to be charged (even though they would have been allowable if incurred thereafter), do not qualify for payment of a Federal financial contribution out of such current appropriation.

§ 302.8 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR Part 900; 44 FR 10238), which prescribe intergovernmental personnel standards on a merit basis for application, as a condition of eligibility, in the administration of grant programs. OPM has approved the adoption made by the regulations in this part.

(b) *Adoption.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

> Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR Part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648 Section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.5(a)(1)(v) of this part provides, in part, that State administrative plans which fail to provide for fulfilling this condition are not approvable.

(42 U.S.C. 4728; 5 CFR Part 900; 44 FR 10238)

§ 302.9 Use of funds, materials, supplies, equipment and personnel.

Financial contributions provided under the authority of Section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need therefor. In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in any area of the United States which suffers a disaster other than a disaster caused by enemy attack.

§ 302.10 Cost principles.

(a) *General.* FMC 74-4 establishes principles and standards for determining costs applicable to grants to State and local governments. The principles are for determining costs only and are not intended to identify the circumstances nor to dictate the extent of Federal or State and local financing of a particular program or project. The principles do not apply to the extent they are restricted or prohibited by law. Attachment A of FMC 74-4 sets forth standards for allowability of particular items of cost. Both attachments of FMC 74-4 are set forth as Appendix P of CPG 1-3. Items of allowable and unallowable costs are listed. In addition, there are listed items of costs for which the prior written consent of the grantor agency is required.

(b) *Types of costs allowable only on approval of the grantor agency.* The types of costs set forth in this paragraph are allowable only upon the approval of the grantor agency. Specific inclusion of such type costs in an indirect cost proposal approved by the responsible Federal agency in accordance with the requirements of FMC 74-4 (Appendix P of CPG 1-3) shall constitute grantor agency approval of such costs as indirect costs, only to the extent that such costs are eligible under criteria contained in the regulations in this part and in CPG 1-3. Approval of such type costs by the grantor agency as direct costs shall be as prescribed in this section. When prior approval on a case basis is required, the determination shall be made by the Regional Director on the basis of the criteria contained in the regulations in this part, CPG 1-3, and the criteria set forth in other federally promulgated regulations referenced in this part.

(1) *Automatic data processing (ADP) equipment.* It is not expected that the civil defense agency of a grantee or subgrantee, will have sufficient need of automatic data processing (ADP) equipment to warrant the purchase or rental of ADP equipment for full-time civil defense needs. In requesting approval of the cost ADP service (whether for rental or for depreciation on equipment owned by the grantee or a subgrantee) such costs may be approved only on the basis of the amount of use required for the civil defense program.

(2) *Building space and related facilities*—(i) *General.* The rental cost of space in a privately owned building

and depreciation and use allowances on publicly owned buildings are allowable expenses. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space for civil defense use may not be charged to the program covered by the regulations in this part for periods of non-occupancy.

(ii) *Requirements for EOC occupancy.* Under Section 201(i) of the Act, (subject to authorization and funding) the grantor agency contributes up to one-half of certain costs incurred by a grantee or subgrantee in installing an emergency operating center (EOC) within existing building space or in space being provided by construction of a new building. The grantor agency does not contribute toward the construction of the building except for items necessary to convert a basic shell area into a functioning EOC. One of the requirements for approval of such grant projects is the agreement of the grantee or its subgrantee for regular occupancy of the EOC by its civil defense agency on a daily basis during normal business hours. The grantor agency will not contribute toward the cost of rent, depreciation, or use allowances for civil defense office space if an EOC has been obtained by the grantee or subgrantee, with the assistance of a grant under section 201(i) of the Act or other Federal funding. An exception may be granted by the grantor agency only upon the grantee's demonstration that its occupancy of the particular EOC, or that of its subgrantee, for day-to-day civil defense administration is not feasible (e.g., due to the EOC's being an unreasonable distance from the site of the State or local department of which civil defense is a part).

(iii) *Depreciation and use allowances.* Depreciation and use allowances, in lieu of depreciation, for use of publicly owned buildings are allowable expenses. The computation of depreciation and use allowances will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal government through charges to Federal grant programs or otherwise. For example, in arriving at the cost of occupancy of EOC space by a grantee's or subgrantee's civil defense agency, the portion of the space covered by the EOC contribution shall be excluded. Except to the extent the grantee or subgrantee, as the case may be, can document that the charge is not based upon costs covered by the EOC contribution, no contribution will be made under the program covered by the regulations in this part for depreciation, or a use allowance for space in an EOC.

(3) *Capital expenditures.* The cost of rearrangement and alteration of office space, furniture, furnishings, office equipment, other capital assets, and repairs which materially increase the value of useful life of capital assets is an allowable expense. When assets acquired with Federal grant funds are:

(i) Sold,

(ii) No longer available for use in a federally sponsored program, or

(iii) Used for purposes not authorized by the grantor agency, the grantor agency's one-half interest in the fair market value of the asset will be refunded. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable. (See Appendix N of CPG 1-3 and Attachment N of OMB Circular A-102). Specific approval of the grantor agency, on a case basis is required for construction projects (See paragraph (m) of §§ 302.11 and 302.13).

(4) *Insurance and indemnification.* In addition to employees' benefits in the form of the grantee's or subgrantee's payments as employer toward social security, employees' life and health insurance plans, unemployment insurance, and workmen's compensation insurance, the cost of other insurance in connection with the general conduct of civil defense activities is allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal government property is unallowable except to the extent that the grantor agency has specifically required or approved such costs on a case basis. Contributions to a reserve for a self-insurance program approved by the grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rate and premiums would have been allowed had insurance been purchased to cover the risks. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable. For example, the grantor agency will not contribute toward securing the grantee or subgrantee against liabilities to third persons and other losses not compensated by insurance or an approved self-insurance program or otherwise. Minor losses not covered by insurance, such as breakage and disappearance of small hand tools and office items and supplies which occur in the ordinary course of civil defense program administration will be accommodated by a contribution toward the cost of replacement or repair of the missing or damaged item.

(5) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(6) *Management studies.* The cost of management studies to improve the effectiveness and efficiency of management of ongoing civil defense programs is an allowable expense except that the cost of studies performed by agencies other than the grantee's or subgrantee's civil defense office or outside consultants is allowable only when and as approved on a case basis by the grantor agency.

(7) *Professional services.* The cost of professional services rendered by individuals or organizations not a part of the grantee's or subgrantee's civil defenes department is an allowable expense only when and as approved on a case basis by the grantor agency.

(8) *Proposal costs.* Cost of preparing proposals on potential civil defense grant projects are allowable.

§ 302.11 Implementation of OMB Circular A-102.

This section implements OMB circular A-102. The circular shall be complied with unless an exception is specifically referred to in this part or is otherwise clearly discernible from the text. The provisions prescribed by attachments to the Circular are contained in the Appendices to CPG 1-3 and are incorporated by reference in the regulations contained in this part.

(a) *Cash depositories*—(1) *Advanced funds.* Attachment A of OMB Circular A-102 (Appendix A of CPG 1-3) sets forth standards governing the use of banks and other institutions as depositories of funds advanced under grants. (See § 302.11(j) on grant payments).

(2) *Minority owned banks.* Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 per cent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230.

(b) *Bonding and insurance.* Attachment B of OMB Circular A-102 (Appendix B of CPG 1-3) sets forth bonding and insurance requirements for grants. They pertain to contracting and to subcontracting by a grantee or subgrantee for construction or facility improvements. The grantee or subgrantee may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000, in which case the grantee shall request approval for use of its own or subgrantee's requirements to adequately protect the Federal government's interest.

(c) *Retention and custodial requirements for records.* Attachment C of OMB Circular A-102 (Appendix C of CPG 1-3) sets forth records retention requirements for grants. The basic requirements are discussed in this paragraph (c) and paragraphs (1) through (4). Financial records, statistical records, personnel records (including merit system administration), procurement records and all other books, papers, records, and supporting documentation pertinent to the grant shall be retained by the grantee and, as to any subgrant, by the subgrantee, for a period of three years, with the following qualifications:

(1) The retention period starts from the date of submission of the fiscal billing.

(2) If any audit, claim investigation, or litigation is started before expiration of the three-year period, the retention requirement shall not expire until the grantee is notified by the grantor agency that all such matters have been resolved and that the grantee may dispose of the records.

(3) Upon request of the granter agency for certain records, the grantee will deliver the requested records and documentation to the grantor agency for long-term retention. In case the grantee still has a need for such records, arrangements will be made for copies, including microfilm copying is so desired.

(4) The head of the grantor agency and the Comptroller General of the United States or any of their duly authority representatives shall have access to any pertinent books, documents, papers and records of any grantee or subgrantee in order to make audits, examinations, excerpts and transcripts.

(d) *Waiver of "single" State agency requirements.* Section 205 of the Act requires plans for civil defense of the United States shall be administered or supervised by a single State agency (50 U.S.C. App 2286). Notwithstanding such law, Section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency upon the State's request to waive the single State agency requirement, and approve other State administrative structure of arrangements upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. App 2251-2297) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 (Appendix D of CPG 1-3) requires that such requests shall be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response shall be made.

(e) *Program income.* Attachment E of OMB Circular A-102 (Appendix E of CPG1-3) requires the application by the grantor agency of the standards set forth therein in requiring grantees to account for program income. With the exception of interest earned on advances and proceeds from the sale of property furnished the Federal government or purchase in whole or in part with Federal funds, gross income (such as service fees, sale of commodities, usage or rental fees) earned by the grantee or a subgrantee from activites supported under the grant progam in this part shall be

(1) Added to funds committed to the program by the grantor agency and the grantee or subgrantee and shall be used to further civil defense program objectives, or

(2) Upon specfic written approval by the grantor agency may be used to finance the non-Federal share of allowable civil defense costs. Grantee and subgrantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant program transactions when revenues are earmarked for its civil defense program. Any interest earned by a subgrantee on advances of Federal funds under the program in this part shall be remitted to the grantor agency. Proceeds from the sale of property, either furnished by the Federal government or procured in whole or in part with Federal funds shall be handled in accordance with Attachment N of OMB Circular A-102, "Property Management standards" (Appendix N of CPG 1-3).

(f) *Matching share.* Attachment F of OMB Circular A-102 (Appendix F of CPG 1-3) sets forth criteria and procedures for the allowability of cash and in-kind contributions made by grantees, subgrantees or third parties in satisfying cost sharing and matching requirements of the grantor agency. The provisions of paragraphs (f)(1) through (4) of this section are in accord with the criteria and apply as an interpretation of some of the standards of Attachment F of OMB Cirular A-102 (Appendix F of CPG 1-3) with respect to their application to the program covered under the regulations in this part:

(1) *Equal matching.* Federal funds provided pursuant to the regulations in this part must be equally matched by the grantee for any non-Federal source determined by the grantee to be consistent with State law. When authorized by Federal statute, Federal funds received from other grants may qualify for use as the grantee's contribution.

(2) *Land.* The value of any land contributed by any grantee or subgrantee (regardless of source) shall be excluded from the grantee's share.

(3) *In-kind contributions.* In-kind contributions represent the value of noncash contributions provided by the grantee, its subgrantees or other non-Federal parties. They may be in the form of charges for goods and services directly benefitting and specifically identifiable to the administration of the State and local civil defense program. Values for in-kind contributions will be established at the grantee's actual cost or fair market value in accordance with FMC 74-4 and Attachment F of OMB Circular A-102 (Appendix F of CPG 1-3).

(4) *Computation.* All costs, whether attributable to cash outlays by the grantee or to in-kind contributions must be attributable to the administration of the civil defense program during the Federal fiscal year to be charged. That is not to say that in all cases the grantee or subgrantee must have made the cash outlay (or received a donation from non-Federal sources) during the grant period. For example, depreciation or use charges may be claimed for the use during the grant period of space in a building which was donated to or procured by the grantee or a subgrantee prior to the Federal fiscal year covered by the grant period. In order to be acceptable as part of the grantee's matching share, costs must meet the following requirements:

(i) Be verifiable from the grantee's records, together with those of any subgrantee;

(ii) Not be included as a contribution under any other Federally-assisted program;

(iii) Fall within the definition of necessary and essential civil defense expenses set forth in paragraph (m) of § 302.2;

(iv) Be a type of cost allowable under the provisions of FMC 74-4;

(v) Be within the grantee's budget submission approved as a part of its annual submission;

(vi) Conform to the requirements of OMB Circular A-102, CPG 1-3, and provisions of the grantor agency's regulations in Title 44 of the Code of Federal Regulations.

(g) *Standards for grantee financial management systems.* (1) Attachment G of OMB Circular A-102 (Appendix G of CPG 1-3) prescribes standards for grantee's financial management systems. Basic provisions are set forth as paragraph (g)(2) to this section, but for additional details and requirements reference must be made to Attachment G of OMB Circular A-102 (Appendix G of CPG 1-3). Grantees shall require subgrantees to adopt the standards. In the case of subgrantees, reports shall be made through the grantee as a part of its reports.

(2) Grantees and subgrantees must maintain a financial management system which provides for the following:

(i) Accurate, current, and complete disclosure of the financial results of each grant made under the Act in accordance with the reporting requirements set forth in Attachment H of OMB Circular A-102 (Appendix H of CPG 1-3). (Also see paragraph (h) of § 302.11).

(ii) Records that identify adequately the source and application of funds for grant-supported activities, including information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

(iii) Effective control over and accountability for all funds, property, and other assets. Grantees and subgrantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(iv) Comparison of actual outlays with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

(v) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements.

(vi) Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of FMC 74-4.

(vii) Accounting records that are supported by source documentation.

(viii) Examinations in the form of audits or internal audits. Such audits should be made in accordance with generally accepted auditing standards including the standards published by the U.S. General Accounting Office, "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions". In addition, the examinations must comply with the requirements set forth in Attachment G of OMB Circular A-102 (Appendix G of CPG 1-3).

(ix) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(h) *Financial reporting requirements.* Attachment H of OMB Circular A-102 (Appendix H of CPG 1-3) prescribes uniform reporting procedures for grantees.

(1) *Financial status report.* Grantees are required to use the standardized Financial Status Report prescribed by the Office of Management and Budget (Approval No. 80-R0180) in Attachment H to OMB Circular A-102 (Appendix H of CPG 1-3) to report on the cash basis the status of funds for all nonconstruction projects and programs. The Financial Status Report shall be submitted to cover a complete Federal fiscal year within ninety days after the end thereof (by December 29th). Extensions to this reporting due date may be permitted by the grantor agency upon a showing of need therefor by the grantee. For the complete requirements, grantees are referred to Attachment H of OMB Circular A-102 (Appendix H of CPG 1-3).

(2) *Report of Federal cash transactions.* Each grantee receiving funds through a letter-of-credit or by direct Treasury checks shall submit a Report of Federal Cash Transactions prescribed by the Office of Management and Budget (Standard Form 272, Approval No. 80-RO 182) to FEMA for its use in monitoring advances and in obtaining disbursement information. Grantees are required to submit the original and two copies of the Report of Federal Cash Transactions 15 working days following the end of each quarter of the Federal fiscal year.

(i) *Monitoring and reporting program performance.* Attachment I of OMB Circular A-102 (Appendix I of CPG 1-3) prescribes procedures for monitoring and reporting program performance under Federal grants.

(1) *Monitoring.* In order to assure that performance goals are being met, each grantee shall constantly monitor its performance and that of its subgrantees and in addition, each subgrantee shall monitor its own performance as to each program, function and activity as set forth in the approved program papers.

(2) *Reporting.* Performance reports shall be submitted to grantor agency in the form, content and within the time frames set forth therefor in CPG 1-3. The CPG 1-3 provisions are in accordance with the requirements of Attachment I of OMB Circular A-102 (Appendix I of CPG 1-3). Performance reports shall briefly present the following:

(i) A comparison of actual accomplishments to the goals established for the Federal fiscal year involved; (where the output can be readily quantified, such quantitative data should be related to cost data for computation of unit costs).

(ii) If established goals were not met, the reasons for such failure;

(iii) Any other pertinent information, including, when appropriate, an analysis and explanation of cost overruns or high unit costs.

(3) *Unexpected developments.* Between performance reporting dates, events may occur which have significant impact upon the programs, or a particular project thereof. In such case, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(4) *Budget revision.* If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K of OMB Circular A-102 (Appendix K of CPG 1-3), the grantee shall submit a request for budget revision. (Also see paragraph (k) of this section).

(j) *Grant payment requirements.* Attachment J of OMB Circular A-102 (Appendix J of CPG 1-3) establishes required methods of making payments to grantees. Grant payments are made to grantees through an advance by Treasury check (before payments are made by the grantee) by letter-of-credit, or through reimbursement by Treasury check. Procedures have been promulgated by the grantor agency in CPG 1-3 in accordance with requirements of OMB Circular A-102 and requirements of the U.S. Department of Treasury.

(1) *Advances.* In order to qualify for an advance the grantee must demonstrate:

(i) Its willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds to the grantee and their disbursement for payment of obligations of the grantee or subgrantee; and

(ii) That its financial management system meets the standards for fund control and accountability prescribed in Appendix G of CPG 1-3 (Attachment G of OMB Circular A-102). Advanced funds must be separately identified and properly accounted for as Federal funds in the fund accounts of the grantee, and, where applicable, its subgrantees. Advances made by a grantee to a subgrantee shall conform to the same standards as provided in this part and in the grantor agency procedures for advances to the grantee. The requirements prescribed or referenced in this part regarding records retention and access for audit and examination pertaining to contributions apply also to books, documents, papers, and records pertinent to an advance of Federal funds. Neither the grantee nor any of its subgrantees shall accumulate Federal funds beyond the amounts needed for immediate disbursement. Unlike the grantee, subgrantees are required to return to the Federal government any interest earned on advances. Proper use of the advance procedure should preclude the accrual of interest on funds drawn by any grantee or subgrantee. Failure to observe the time and amount limitations on drawdowns or to meet the reporting requirements established by the grantor agency may result in revocation of the unobligated portion of any letter-of-credit or denial of subsequent requests for an advance, or both.

(A) *Advances by letter-of-credit.* A grantee with an approved Federal funding request of $120,000 or more and meeting the requirements for an advance, for the Federal fiscal year may obtain cash advances of Federal contributions only by drawing payment vouchers against letters-of-credit in accordance with procedures established by the grantor agency. Each drawdown on a letter-of-credit shall be initiated at approximately the same time that the recipient grantee or its subgrantee is to disburse its funds in payment of eligible civil defense personnel and administrative expenses and shall be in amount not greater than that required to cover the Federal share of such imminent disbursement. A separate account is required in order for the grantee to draw on the U.S. Treasury when the grantee's checks are presented to its bank for payment. In order to be consistent with the national goal of expanding opportunities for minority business enterprises, it is requested that grantees and subgrantees use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230. Procedures for advances by letter-of Credit are prescribed in Chapter Two of CPG 1-3 and in the grantor agency's manual entitled "Letter of Credit Procedures."

(B) *Advances by Treasury check.* Provided it meets the requirements for an advance, a grantee whose approved Federal funding for the fiscal year is not sufficient in amount to qualify for use of the letter-of-credit process or an insular area receiving consolidated grant under the provisions of Part 304 of this title may obtain advance payments by Treasury check either upon specific request or under predetermined payment schedules. Procedures for advances by Treasury check are prescribed in Chapter Two of CPG 1-3.

(2) *Reimbursement by Treasury check.* Procedures for reimbursement are prescribed in Chapter Two of CPG 1-3. Payment will be made within thirty days of receipt of each quarterly billing, unless the billing contains unallowable items or is otherwise improper.

(3) *Withholding payment.* When, after reasonable notice and opportunity for hearing the Director finds that there is a failure to expend funds in accordance with the regulations in this part, or other regulations, terms, and conditions established by or under the Act for approved civil defense plans, programs, or projects, the grantee will be notified that further payments will not be made to the grantee from appropriations under the Act (or from funds otherwise available for the purposes of the Act for any approved plan, program, or project with respect to which there is failure to comply) until the Director is satisfied that there will no longer be any such failure. Until so satisfied, the Director shall either withhold the payment of any financial contribution to such grantee or limit payments to those projects or programs with respect to which there is substantial compliance. Procedures for such withholding of payments, including notice and hearing, are set forth in Part 1803 of this title.

(k) *Budget revision procedures.* The procedures set forth in this paragraph, and as detailed in CPG 1-3, are in accordance with the requirements of attachment K of OMB Circular A-102 (Appendix K of CPG 1-3). The grant budget as used in this part means the grantee's financial plan, covering it and all subgrantees for both the Federal and non-Federal share) to carry out the program covered in this part, as approved in the grantee's annual submission. Funding requested for projects involving construction in excess of $2,000 must be separately identified. No transfer may be permitted which would cause any Federal appropriation or part thereof to be used for purposes other than those intended.

(1) *Nonconstruction objectives.* The grantee shall request prior approval by the grantor agency when there is reason to believe that a revision will be necessary for one of the following reasons:

(i) Changes in the scope or the objective of the grant-supported program.

(ii) The need for additional Federal funding.

(iii) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(iv) The addition of items requiring approval in accordance with the provisions of FMC 74-4.

(v) The grantee or a subgrantee plans to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

(vi) The Federal share of the grantee's budget exceeds $100,000 and the cumulative amount transfereed for the then current Federal fiscal year exceeds or is expected to exceed five percent of the total approved budget for the program.

(2) *Construction grants.* When construction work in excess of $2,000 is to be covered under the program in this part, a separate approval must be submitted on grantor agency project application forms (construction) meeting the requirements of Appendix M of CPG 1-3 (Attachment M of OMB Circular A-102). No amounts may be transferred from a nonconstruction budget account to a construction budget account, or vice versa, without the prior approval of the grantor agency. In addition, the grantee shall request prior approval by the grantor agency whenever the revision results from changes in the scope or objective of the project.

(3) *Notification of excess funds.* The grantee shall notify the grantor agency promptly whenever the amount of its allocation is expected to exceed its actual needs (including those of subgrantees) by more than $5,000 or five percent (5%) of its allocation, whichever is greater.

(4) *Forms and procedures.* Approval for budget revisions shall be requested on the budget forms (See § 302.2(h)) used in the grantee's annual submission unless the revision involves construction in excess of $2,000 (see paragraph (k)(2) of this section). Within thirty (30) days of receipt of the request for budget revision, the grantor agency will review the request and notify the grantee of the grantor agency's decision, or as to the date a decision may be expected. In order to assure compliance with fiscal year limitations, requests should be submitted in time for receipt by the grantor agency at least 30 days prior to the end of the then current Federal fiscal year.

(l) *Grant closeout procedures.* Attachment L of OMB Circular A-102 (Appendix L of CPG 1-3) prescribes uniform closeout procedures for grantees. The procedures as set forth in this paragraph and as detailed in CPG 1-3 are in accordance with the requirements of Attachment L of OMB Circular A-102 (Appendix L of CPG 1-3).

(1) *Fiscal period.* Grants under the regulations in this part are made on a Federal fiscal year basis and run from October 1 of the calendar year in which the appropriation is allocated to September 30 of the following calendar year.

(2) *Billings.* Grantees shall submit billings on grantor agency prescribed forms within thirty (30) days after the end of the Federal fiscal quarter. If the grantee has received an advance of Federal funds for itself or any subgrantee, the billing will be applied against the outstanding advance. The grantee shall immediately refund any balance of unobligated (unencumbered) cash advanced to the grantee (including sums advanced to a subgrantee). The grantor agency will make prompt payment to the grantee for remaining allowable, reimbursable costs due under the grant.

(3) *Reports.* Unless an extension has been given in writing by the grantor agency, the grantee shall submit, within ninety days of the end of the grant period (i.e., by December 30) all financial, performance, and other reports required under the terms of the grant.

(4) *Property.* The grantee shall account for property acquired with the assistance of grant funds in accordance with the provisions of Appendix N of CPG 1-3 (Attachment N of OMB Circular A-102). Thus the grantee shall report to the grantor agency on each instance of the following:

(i) Any proposed non-civil defense use or any disposal proposed to be made of property acquired with the assistance of grant funds under the program covered in this part,

(ii) As to any subgrantee which will not be participating in the program for the balance of the current Federal fiscal year or succeeding Federal fiscal year, and

(iii) In addition, a report as to such property obtained by the grantee in the event the grantee is not participating for the new Federal fiscal year.

(5) *Termination for cause.* The Director may terminate any grant in whole or in part, at any time prior to the end of the then current Federal fiscal year, whenever it is determined that the grantee has failed to comply with the conditions of the grant. When, after reasonable notice and op-

portunity for hearing to the grantee (or to the grantee and its subgrantee, as the case may be) the Director finds that there is a failure to expend funds in accordance with the regulatons in this part, or other regulations, terms, and conditions established by or under the Act for approved civil defense plans, programs, or projects, he will notify the grantee (or the grantee and its subgrantee, as the case may be) that further payments will not be made for the grantee or any or all subgrantees from appropriations under the Act (or from funds otherwise available for the purposes of the Act for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure. Until he is so satisfied, the Director shall either withhold the payment of any financial contributions to such grantee (for it or any or all subgrantees) or limit payments to those projects or programs with respect to which there is substantial compliance. The procedures for notices, hearings, and the withholding of financial contributions by the Director shall be as prescribed in the regulations of the grantor agency appearing at 44 CFR Part 303.

(m) *Standard forms for applying for federal assistance.* The program covered in this part is a formula grant program, rather than one for which grants are obtained on a project basis, and basically not subject to the requirements of Attachment M of OMB Circular A-107 (Appendix M of CPG 1-3). However, in the event a grantee on its own behalf or that of a subgrantee, seeks to apply Federal funds provided under the program covered in this part toward the cost of a project involving construction in excess of $2,000; approval of the project is to be requested from the Regional Director, on a form, prescribed by the grantor agency for applications for Federal Assistance for Construction Programs which meets the requirements of Appendix M of CPG 1-3 (Attachment M of OMB Circular A-102). For information regarding various Federal requirements applicable by reason of the construction phase of a project see § 302.13 and 44 CFR Parts 308 and 309.

(n) *Property management standards*—(1) *General.* Attachment N of OMB Circular A-102 (Appendix N of CPG 1-3) prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds. These standards must be observed by all grantees and subgrantees with regard to all nonexpendable property acquired with the assistance of Federal funds provided under the program covered in this part. Grantees and subgrantees may use their own property management standards and procedures provided that they include the provisions set forth in Appendix N of CPG 1-3. (Attachment N of OMB Circular A-102).

(2) *Summary*—(i) *Use and disposal.* Included are requirements that tangible nonexpendable personal property acquired by a grantee or subgrantee with the assistance of a Federal financial contribution shall be used by the grantee or subgrantee in the grant program for which it was acquired as long as needed therefor, then for other activities sponsored by the grantor or another Federal agency. Also, when no longer needed for any such purposes, the property may be used or disposed of only as specified by the grantor agency in accordance with the federally prescribed management standards which include provisions for payment of compensation to the grantor agency for its portion of the fair market value of the property. The federally prescribed standards also provide for disposal or nonrestrictive use, upon payment for the Federal share of the fair market value, of property no longer needed for Federal or federally assisted program use.

(ii) *Procedural requirements.* Included without limitation are the procedural requirements set forth in this paragraph.

(A) *Property records.* Accurate property records must be maintained which will identify (including manufacturer's serial number or other identifying number where appropriate) the property obtained from or with the assistance of the Federal Government and details regarding any disposition. The records must also show the program or project for which the property was required; the location, use being made, condition of the property and the date the information was reported.

(B) *Inventory.* A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Quantity discrepancies shall be investigated and fully documented. The grantee, or subgrantee as the case may be, shall, in connection with the inventory, verify the existence, current use, and continued need for the property.

(C) *Control system.* A control system shall be in effect to insure adequate safeguards to prevent the loss, damage, or theft of the property. Any loss, damage, or theft of a property shall be investigated and fully documented. Each suspected theft shall be reported to the appropriate police authority.

(D) *Maintenance.* Adequate maintenance procedures shall be implemented to keep the property in good condition.

(E) *Disposal by sale.* Where the grantee or a subgrantee is authorized or required to sell an item of property, proper sale procedures shall be established to provide competition and to assure the highest return.

(o) *Procurement standards.*—(1) *General.* Attachment O of OMB Circular A-102 (Appendix O of CPG 1-3) provides standards for use by grantees in establishing procedures for the procurement of supplies, equipment, construction, and other services with the assistance of Federal grant funds. The standards are applicable to grantees and subgrantees under the program covered in this part.

(2) *Summary*—(i) *Grantee's rules.* Grantees and subgrantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with the assistance of Federal financial contributions adhere to the standards set forth in Appendix O of CPG 1-3 (Attachment O of OMB Circular A-102). The Federally prescribed standards do not relieve the grantee or subgrantee of contractual responsibilities arising under its contracts. The Federally prescribed standards include among others, provisions requiring standards of conduct, open and free competition, and minimum procurement procedures.

(ii) *Procedures.* The minimum procedures must contain requirements regarding review by officials, invitations for bids, request for proposals, utilization of small businesses and minority owned businesses, procuring instruments, formal advertising, negotiated procurement, and contract administration.

(iii) *Contract provisions.* Standards regarding contractural provisions and conditions include requirements such as termination clauses, EEO clauses and bid provisions (in accordance with E.O. 11246, E.O. 11375 and U.S. Department of Labor regulations at 41 CFR Parts 60-1 and 60-4), requirements for availability of contractor's records clauses regarding rights to inventions, and agreement to comply with the Clean Air Act, where applicable.

(iv) *Clauses for construction and repair contracts.* Requirements include the provisions for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by U.S. Department of Labor regulations appearing at 29 CFR Part 3. Construction contracts, awarded under the program covered in this part, which exceed $2,000 shall include the labor standards clause set forth in Part 308 of this title. (Also see 29 CFR Part 5.) This clause includes a provision for compliance with Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) pertaining to overtime. Such contracts, and any other Federally assisted contracts in excess of $2,500 involving the employment of laborers and mechanics, shall include provisions for compliance with section 107 (as well as section 103) of the Work Hours and Safety Standards Act, which prohibit contractors and subcontractors from requiring any laborer or mechanic to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to his/her health or safety as determined under standards promulgated by regulations of the

U.S. Secretary of Labor. (Also see § 302.13 and 44 CFR Part 309.)

§ 302.12 Other Federal requirements.

By submission of a request for Federal financial assistance under the program covered in this part, each grantee, on its own behalf and that of its subgrantees, agrees as a condition of the grant to comply with the Federally approved requirements and prescriptions set forth in this section. Refusal or failure to comply may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(a) *Archeological and historic sites.* Each grantee and subgrantee shall assist the grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.). Without limitation, activities by each grantee in this regard include:

(1) Consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800) by the activity, and notifying the grantor agency of the existence of any such properties; and

(2) Complying with all requirements established by the grantor agency to avoid or mitigate adverse effects upon such properties.

(b) *Environmental protection.* Each grantee and subgrantee shall insure that the facilities under its ownership, lease or supervision which are to be utilized in the accomplishment of the programs covered in this part are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and shall notify the grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

(c) *Flood insurance.* Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973, requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified as a special flood hazard area. Costs are not allowable for acquisition or construction, reconstruction, repair or improvement of a building, or for the acquisition or repair of personal property in a building which is located in an identified special flood hazard area unless the assisted property is covered by flood insurance up to the full value of the property or the limit of available flood insurance coverage, whichever is less. Identified special flood hazard areas are areas having special flood hazards as identified by the Federal Emergency Management Agency and published in the FEDERAL REGISTER.

(d) *Handicap.* Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as amended by Pub. L. 93-516) prohibits discrimination on the basis of handicap in any programs or activities receiving Federal financial assistance.

(e) *Hatch Act.* (5 U.S.C. 1501 et seq.) The Hatch Act prohibits covered State and local officers and employees from engaging in the following activities:

(1) The use of official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office;

(2) Directly or indirectly coercing or attempting to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose; or

(3) Be a candidate for elective public office in a partisan election. An officer or employee of a grantee or subgrantee agency is subject to the Hatch Act if, as a normal and foreseeable incident to his/her principal job or position, he/she performs duties in connection with an activity financed in

whole or in part by Federal loans or grants. Certain exceptions are provided both as to types of employment and types of office or candidacy. Grantees and subgrantees must insure compliance on the part of covered employees. The penalty for a violation is removal from employment and a bar on employment in a State or local agency within the same State for a period of 18 months. Failure of a State or local agency to comply may result in withholding of Federal grants up to an amount equal to two years' pay of the employee (see 5 CFR Part 151).

(f) *Nondiscrimination.* (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.) provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (See grantor agency regulations at 44 CFR Part 307 and CPG 1-10.)

(2) The Age Discrimination Act (42 U.S.C. 6101-7) provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

(g) *Relocation assistance.* The Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (Pub. L. 91-646) applies to those federally assisted programs or projects conducted by a grantee or its subgrantee which involve the acquisition of real property or cause the displacement of people, businesses, or farm operations. With regard to the requirements applying, it is immaterial whether Federal funds are applied to the cost of the real property. Each grantee and subgrantee agrees not to proceed with any phase of a project which will cause the displacement of any individual, partnership, corporation, or association or the acquisition of any real property without first providing the grantor agency a satisfactory assurance, as required by sections 210 and 305 of Pub. L. 91-646 that fair and reasonable relocation payments and assistance shall be provided to or for displacing persons as required to be provided by a Federal agency under sections 202, 203, and 204 of Pub. L. 91-646, and that within a reasonable period of time prior to displacements, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with Section 205 of Pub. L. 91-646.

§ 302.13 Projects involving construction.

(a) *Procedures.* In the event a grantee or subgrantee is to apply any portion of the Federal funds provided under the program in this part toward the cost of a project involving construction in excess of $2,000 the grantee must obtain the prior approval of the Regional Director on construction project application forms. (See paragraph (m) of § 302.11)

(b) *Additional Federal requirements.* As a condition to allowability under the program in this part, of any portion of the cost of a project involving construction, a number of additional Federal requirements may apply. The major categories of requirements and proscriptions are set forth in this section. Additional information is contained in 44 CFR Part 309, CPG 1-3, and in regulations of various other Federal agencies which administer the specific standards and requirements—as referenced in the regulations in this part, 44 CFR Part 309, and in CPG 1-3. Refusal or failure to comply may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received. (See § 302.6 and paragraphs (1) and (5) of § 302.11 of this part, and 44 CFR Part 303.)

(1) *Accessibility by the physically handicapped.* In undertaking projects for new facilities, and for renovation to the extent they can be implemented in the area to be renovated with the use of Federal funds provided under the program covered in this part, each grantee and subgrantee shall provide for making the facilities accessible to and usable by the physically handicapped. The requirements are contained in General Services Administration (GSA) regulations appearing at 41

CFR Subpart 101-17.5, issued under authority of the Architectural Barriers Act of 1968 (Pub. L. 90-480).

(2) *Equal employment opportunity.* The grantee or its subgrantee, as the case may be, shall incorporate the federally prescribed equal employment opportunity (EEO) clause set forth at 41 CFR 60-1.4(b) into any contract for construction work or modification that is paid for with the assistance of Federal funds furnished under the program covered in this part. In addition, the grantee and subgrantee, where applicable, shall:

(i) Be bound by the clause with respect to its own employment practices when it participates in federally assisted construction work. The clause is applicable only to State and local departments that participate in the work under the contract.

(ii) Affirmatively cooperate with and assist the U.S. Department of Labor in obtaining the compliance of contractors and subcontractors. The grantee must furnish either the grantor agency or the Office of Federal Contract Compliance Programs (OFCCP) with any information that either agency may require for the supervision of such compliance.

(iii) Refrain from entering into any contract or contract modification with a contractor who has been determined by the Federal government to be ineligible for any further Federal contracting or contract bidding or who has not otherwise demonstrated eligibility for government contracts and federally assisted construction contracts.

(iv) Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the grantor agency or the U.S. Secretary of Labor.

(3) *Labor standards*—(i) *Wage rates (Davis-Bacon Act).* The obligations of each grantee include ensuring that every contract let by a grantee or subgrantee which involves construction in excess of $2,000 and which is funded in part from Federal funds provided under the program covered in this part, shall include as a part thereof the labor standards provisions, in completed form, set forth at 44 CFR 308.4 (also see 29 CFR 5.5) and shall have attached thereto the applicable wage determination of the U.S. Secretary of Labor (see 29 CFR Part 1). Each advertisement of an invitation to bid shall indicate expressly that if the construction phase of the contract exceeds $2,000, the Davis-Bacon Act requirements apply and the grantee or subgrantee shall place a copy of the current prevailing wage determination issued by the U.S. Secretary of Labor in each solicitation and the award of the contract shall be conditioned upon acceptance of the wage determination (see 44 CFR 308.3 and Appendix 0 of CPG 1-3).

(ii) *Work hours and overtime.* The work hours and overtime provisions of the Work Hours and Safety Standards Act of 1962 as amended (40 U.S.C. 327 et seq.) and the Federal regulations issued thereunder (29 CFR Part 5) apply to contracts and subcontracts involving the employment of laborers and mechanics which are assisted by Federal funds provided under the program covered in this part. The provisions prescribe an eight-hour work day, a 40-hour work week and "time and half" for overtime. The grantor agency may withhold funds from the grantee in an amount sufficient to pay the amount of any unpaid wages and liquidated damages determined to be due under the provisions of the statute.

(iii) *Anti-kickback.* The Copeland Act, 18 U.S.C. 874, 40 U.S.C. 270c and the regulations issued thereunder (29 CFR 3.1 et seq.) apply to the construction or repair of a building or work financed in part under the program covered in this part. It provides procedures for submission by contractors and subcontractors of weekly payroll statements and permissible deductions from wages. It also prescribes a criminal penalty for including an employee to make a kickback.

(iv) *Safety standards.* The safety standards provisions of the Contract Work Hours and Safety Standards Act as amended (40 U.S.C. 327 et seq.) and the regulations issued thereunder (29 CFR Part 1926) apply to each contract entered into by a grantee or subgrantee for construction alteration and/or repair, including painting and decorating which is financed in part with Federal funding provided under the program covered in this part. Each such contract must provide as a condition thereof that no contractor or subcontractor for any part of the work shall require any laborer or mechanic engaged in the performance of the contract to work in any place, or under any working conditions which are unsanitary, hazardous or dangerous to health and safety.

(v) *Convict labor.* With the exception of labor performed by convicts who are on parole, probation, or an approved work training program meeting the requirements of Executive Order No. 11755, dated December 28, 1973 (39 FR 779), convict labor shall not be used on construction performed with the assistance of Federal funds furnished under the program covered in this part.

PART 303—PROCEDURE FOR WITHHOLDING PAYMENTS FOR FINANCIAL CONTRIBUTIONS UNDER THE FEDERAL CIVIL DEFENSE ACT

Sec.
303.1 Purpose.
303.2 Definitions.
303.3 Scope.
303.4 Notice of intention to withhold payments.
303.5 Notice of hearing.
303.6 Hearings.
303.7 Withholding of payments.

AUTHORITY: 50 U.S.C. App. 2253; 72 Stat. 1799; 23 FR 4991; E.O. 10952, 26 FR 6577; Order of the Secretary of Defense, 37 FR 18636; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

SOURCE: 40 FR 16314, Apr. 11, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979, unless otherwise noted.

§ 303.1 Purpose.

The purpose of the regulation in this part is to establish, pursuant to section 401(h) of the Act, a procedure by which the Director may withhold payments of financial contributions to States or persons, or may limit such payments to specified programs or projects.

§ 303.2 Definitions.

As used herein the following terms shall have the following meanings:

(a) Act. The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251-2297).

(b) FEMA. Federal Emergency Management Agency.

(c) Director. Director, FEMA.

(d) State. The several States, the District of Columbia, Puerto Rico, and the Territories and possessions of the United States.

(e) Person. A political subdivision of any State, or combination or group thereof; any interstate civil defense authority established pursuant to section 201(g) of the Act, or any person, corporation, association or other entity of any nature whatsoever, including but not limited to, instrumentalities of States and political subdivisions.

§ 303.3 Scope.

(a) Section 401(h) of the Act authorizes the Director to withhold payment of any financial contribution under section 201 or section 205 of the Act to a State or a person, or to limit payments to specified programs or projects upon (1) a finding by the Director of failure by a State or person to expend funds in accordance with the regulations, terms, and conditions established under the Act for approved civil defense plans, programs or projects; and (2) notification to the State or person that certain payments for approved financial contributions will not be made until the Director is satisfied that there will no longer be failure by a State or person to expend funds in accordance with such regulations, terms, and conditions. Prior to the making of such finding and issuance of the notification, the State or person must have been given reasonable notice and opportunity for hearing.

(b) The regulations in this part specify (1) the notice which must be given to a State or person, (2) the procedures for obtaining a hearing, and (3) the terms of the notification to the State or person that further payments will not be made if the Director determines, after noticc and hearing that there has been a failure to expend funds in accordance with regulations, terms, and conditions established pursuant to the Act.

§ 303.4 Notice of intention to withhold payments.

(a) Whenever the Director has reason to believe that a State or person has failed to expend funds in accordance with the regulations, terms, or conditions governing a Federal financial contribution established pursuant to the Act, he shall notify the State and person, where applicable, of such fact and of his intention to withhold any further contributions or payments, or contributions or payments for specific programs or projects, unless the alleged failure is satisfactorily explained, or until he is satisfied that there is no longer such failure to comply.

(b) The notice shall specify (1) the date on which he will stop or withhold further payments; (2) the regulations, terms, or conditions which he believes have not been complied with in the expenditure of funds; and (3) the contributions or payments which he intends to withhold; and shall inform the State and person, where applicable, of the right to obtain a hearing.

(c) This notice shall be delivered by certified mail, return receipt requested.

§ 303.5 Notice of hearing.

If, within 15 days after receipt of the notice described in § 303.4, the State or person requests the Director to hold a hearing, the Director will set the matter for hearing. The Director will give the State (and person, where applicable) reasonable notice of the time and place of the hearing.

§ 303.6 Hearings.

(a) Any hearing under this part shall be held before the Director provided that, in his discretion, the Director may designate a hearing officer who will take evidence and certify, to the Director, the entire record, including recommended findings, and a proposed decision.

(b) The State and person, where applicable, shall be given full opportunity to present their position, orally and in writing.

§ 303.7 Withholding of payments.

(a) If after the hearing, or after opportunity therefor, the Director finds that there has been a failure to expend funds in accordance with the regulations, terms, and conditions established pursuant to the Act, the Director will withhold such contributions and payments as he may consider advisable until the failure to expend funds in accordance with the regulations, terms, and conditions has been corrected or he is satisfied that there will no longer be any such failure.

(b) If, upon the expiration of the 15 day period stated in § 303.5, a hearing has not been requested, the Director may issue the finding described in paragraph (a) of this section, and thereupon withhold contributions and payments until he is satisfied that there will no longer be any failure to expend funds in accordance with regulations, terms, and conditions governing a Federal contribution for an approved program or project.

PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

Sec.
304.1 Purpose.
304.2 Definitions.
304.3 Conditions for a consolidated grant.
304.4 Allocations.
304.5 Audits and records.

AUTHORITY: Secs. 201(i), 205, and 401, Federal Civil Defense Act of 1950, 64 Stat. 1245-1257; E.O. 10952, 3 CFR 1959-1963 Comp. p. 479, 26 FR 6577; Order of the Secretary of Defense 37 FR 18636; Pub. L. 95-134, 91 Stat. 1159; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

SOURCE: 43 FR 39776, Sept. 7, 1978, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 304.1 Purpose.

The purpose of the regulations in this part is to prescribe the basis under which the Federal Emergency Management Agency (FEMA) contributes Federal funds to an insular area through a consolidated grant.

§ 304.2 Definitions.

Except as otherwise stated when used in the regulations of this part, the meaning of the listed terms are as follows:

(a) *Insular areas.* The Virgin Islands, Guam, American Samoa, and the Government of the Northern Mariana Islands.

(b) *Consolidated grant.* A grant by FEMA to any insular area through an allocation which combines funds for the State and local management program and the State and local maintenance and services program for a single Federal fiscal year.

(c) *FEMA guidance material.* FEMA regulations (44 CFR Chapter I, Subchapter E), Civil Preparedness Guide (CPG) 1-3, and Civil Preparedness Circulars (CPC) as presently providing or hereafter amended or revised.

§ 304.3 Conditions for a consolidated grant.

(a) In order to participate, an insular area must submit a (one-time) administrative plan as provided for in FEMA guidance material (to be maintained in current status) and must sign a (one-time) civil rights assurance (FEMA form 856) and a (one-time) grant agreement agreeing to comply with Federal requirements.

(b) An insular area need not submit an application for a consolidated grant, but must submit an annual program paper which meets the requirements prescribed in FEMA guidance material.

(c) Funds made available under a consolidated grant must be expended for State and local management program expenses and/or State and local maintenance and services program expenses as defined and described in FEMA guidance material. Each participating insular area will determine the proportion in which funds granted to it will be allocated between the two programs.

(d) Participating insular areas need not provide matching funds for consolidated grants.

§ 304.4 Allocations.

For each Federal fiscal year concerned, the Director, FEMA, shall allocate to each participating insular area an amount not less than the sum of grants for the two programs which the Director, FEMA, has determined such insular area would otherwise be entitled to receive for such fiscal year.

§ 304.5 Audits and records.

(a) *Audits.* FEMA will maintain adequate auditing, accounting and review procedures as outlined in FEMA guidance material and OMB Circulars No. A-73 and A-102.

(b) *Records.* Financial records, supporting documents, statistical records, and all other records pertinent to a consolidated grant shall be retained for a period of three years from submission of final billing and shall be available to the Director, FEMA, and the Comptroller General of the United States, all as prescribed in FEMA guidance material and in accordance with OMB Circular A-102 (42 FR 45828-45891).

PART 305—REIMBURSEMENT TOWARD EXPENSES OF STUDENTS ATTENDING FEMA SCHOOLS

Sec.
305.1 Purpose.
305.2 Definitions.
305.3 Conditions of payment.

AUTHORITY: Secs. 201(e) and 401(g) 64 Stat. 1249, 1255, 50 U.S.C. App. 2281, 2253; Reorg. Plan No. 1 of 1958, 72 Stat. 1799-1801, 23 FR 4991; E.O. 10952, 26 FR 6577; 29 FR 5017, Apr. 10, 1964.

SOURCE: 31 FR 9348, July 8, 1966, unless otherwise noted.

NOTE: Nomenclature change appears at 38 FR 16775, June 26, 1973.

§ 305.1 Purpose.

The regulations in this part govern the payment by the Federal Emergency Management Agency, pursuant to section 201(e) of the Federal Civil Defense Act of 1950, as amended, of not to exceed one-half of the travel expenses and per diem allowances for students attending a FEMA school.

§ 305.2 Definitions.

As used in this part:

(a) "Act" means the Federal Civil Defense Act of 1950, as amended (50 U.S.C App. 2251-2297).

(b) "FEMA" means the Federal Emergency Management Agency. Where action is to be taken this term denotes the Director or other duly authorized official(s) acting under authority delegated.

(c) "FEMA school" means a school operated by FEMA pursuant to section 201(e) of the Act.

(d) "FEMA student expenses program guidance material" means written criteria and procedures officially promulgated by FEMA over the signature of the Director for uniform application in the student expenses program conducted pursuant to section 201 (e) of the Act and under the regulations in this part. The guidance material to be applied to a particular payment will be that current at the time of FEMA approval of the request for payment.

(e) "Student" means a civil defense official or other person who has been approved by the State and FEMA for attendance and who registers for and attends a course of instruction at a FEMA school as specified in FEMA student expenses program guidance material.

(f) "Student expenses" means the costs of travel from place of residence to a FEMA school and return, and per diem allowances in lieu of subsistence while in travel status and while in attendance at such school, to be partially reimbursed (up to one-half) under procedures and in accordance with terms and conditions prescribed in this part and in FEMA student expenses program guidance material, but not exceeding the standards or payments prescribed or authorized under Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended.

(g) "Program paper" means the written statement of a State or political subdivision, as the case may be, identifying its civil defense programs, projects and activities planned for the fiscal year covered and which has been approved as provided for in the then current criteria and procedures issued by FEMA.

[31 FR 9348, July 8, 1966. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 44 FR 62517, Oct. 31, 1979]

§ 305.3 Conditions of payment.

(a) The State civil defense director and, where applicable, the civil defense director of a political subdivision must have approved in writing the particular training of the named student as being in furtherance of civil defense goals set forth in its current civil defense program paper. Approvals in the absence of a current civil defense program paper will be made only as specifically provided for in FEMA student expenses program guidance material. In any event the signing of approval shall constitute a promise by the State (and political subdivision, where applicable) to comply with FEMA regulations (the regulations in this subchapter) and with the provisions of FEMA student expenses program guidance material.

(b) The student must have signed a statement of his intention to participate in the civil defense activities of the State and where applicable of the political subdivision.

(c) As to each student, the total of Federal payments shall be limited to one-half the sum of the student expenses (uncompensated from any other Federal source) approved by FEMA for such student for the session covered.

(d) No advance of Federal funds will be made to the student or to the State or political subdivision.

(e) Federal checks shall be made payable either to the individual student incurring the expenses or to the State or political subdivision, which incurred the expenses on behalf of the student, or jointly, in accordance with procedures set forth in FEMA student expenses program guidance material.

PART 306—OFFICIAL CIVIL DEFENSE INSIGNE

Sec.

306.1 Purpose.
306.2 Definitions.
306.3 Prescribed insigne.
306.4 Official articles.
306.5 Manufacture, reproduction and display of the prescribed insigne.
306.6 Distribution, issuance, and retail sale of the prescribed insigne.
306.7 Prohibited use of the prescribed insigne.

Sec.
306.8 Violations.

AUTHORITY: Sec. 204 and 401, Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2284 and 2253); Reorganization Plan No. 1 of 1958, 72 Stat. 1799; Executive Order 10952, 26 FR 6577; DOD Directive 5105.43; 37 FR 18636; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

SOURCE: 43 FR 26568, June 21, 1978, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 306.1 Purpose.

(a) The purpose of the regulations in this part is to prescribe an insigne which may be used by any State or local civil defense organization and by persons engaged in civil defense activities approved by such organizations and to establish requirements for the reproduction, manufacture, display, sale, possession, and wearing thereof.

(b) This does not mean that a State or local civil defense, civil preparedness, or emergency services organization may not, under its own authority, establish and use its own insigne, seal, or similar device. There is no attempt to preempt the field.

§ 306.2 Definitions.

Except as otherwise stated, the following terms shall have the following meanings when used in the regulations in this part:

(a) "Director, FEMA" means the Director, Federal Emergency Management Agency.

(b) "Civil Defense Agency" means a unit of a State or of a political subdivision established pursuant to law and responsible for the development of those activities and measures which are authorized for civil defense organizations either under Federal or State or local law.

(c) "Civil Defense Director" means the person or body having authority over a civil defense agency and any duly authorized designee of such person or body. Such term may refer either to a State Director or to the civil defense director of a political subdivision.

(d) "Official articles" means articles designated as such by the Director, FEMA and embodying the prescribed insigne.

(e) "Organizational equipment" means equipment (other than personal equipment) which the Director, FEMA determines is necessary to a civil defense organization for civil defense purposes and which is of such a nature as to require the contribution of Federal funds, but not including items of equipment which the local community normally utilizes in combating local disasters except when required in unusual quantities dictated by the requirements of civil defense plans.

(f) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 306.3 Prescribed insigne.

(a) The prescribed insigne shall be the design covered under Letters Patent 129797, October 7, 1941, consisting of the "CD" symbol in bright red, centered within a white equilateral triangle superimposed upon a dark blue circle.

(b) The prescribed insigne may be reproduced in the above colors, in black and white, or in the color of the surface upon which reproduced and one other color: *Provided,* That if the color of the surface or the ground is orange, the triangle shall not be blue. The intent of this restriction is that this insigne shall not be confused with the international civil defense sign established in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Annexes.

(c) Where appropriate, the name of a particular civil defense service, the State, or a political subdivision, may be spelled out in block letters on, in, or immediately surrounding the prescribed insigne.

(d) The dimensions of the components of the prescribed insigne when the blue circle is three inches in diameter will approximate the following: The triangle will be equilateral two and one-quarter inches on a side, each of the letters in the "CD" symbol will be three-sixteenth inches in thickness and will occupy a circle one and one-eighth inches in diameter centered in the triangle. Other sizes of the prescribed insigne will be established by diameter of the blue circle only; to the extent that the diameter of the blue circle is greater or less than three inches, the dimensions of the other components shall be proportionately increased or decreased.

(e) The following alteration or modification of the prescribed insigne is authorized pursuant to § 306.5(d):

Radio Amateur Civil Emergency Service. Superimposed on the official civil defense insigne a white jagged arrow edged in blue resembling a flash of lightning, symbolic of space radiation, containing the inscription "Radio" in blue letters, and extending from the upper right circumference of the blue circle and through the lower left-hand angle of the triangle. Below the triangle and within the blue circle is the inscription "RACES" in white letters.

§ 306.4 Official articles.

(a) Official articles shall consist of the following articles embodying the insigne:

(1) Arm bands.

(2) Badges.

(3) Hat bands.

(4) Helmets.

(5) Pennants, placards, plates, or stickers for aircraft, vehicles, or vessels.

(6) Membership cards.

(b) No person shall possess, display, wear, or use an official article unless such person is authorized to do so by the Director, FEMA or by a Civil Defense Director: *Provided,* That this prohibition shall not apply to the possession or display of official articles by a manufacturer, wholesaler, or retailer in the normal course of business, or to display of pennants, placards, plates, or stickers on aircraft, vehicles, or vessels designated for operational use by a Civil Defense Director.

§ 306.5 Manufacture, reproduction and display of the prescribed insigne.

(a) Any individual, association or business entity may manufacture the prescribed insigne and official articles in compliance with these regulations.

(b) The prescribed insigne may be manufactured, reproduced, and displayed only:

(1) On official articles.

(2) On organizational equipment.

(3) On items of identification issued by a Civil Defense Director to permit necessary movement of persons, vehicles and equipment during a period of emergency operations.

(4) On facilities and equipment designated for emergency operational use by a Civil Defense Director and on devices used for alerting the public in time of emergency.

(5) On official letterheads, publications, posters, signs, advertisements, lapel pins, pennants, placards, flags, banners, certificates of membership and certificates of award used, issued, or authorized by a Civil Defense Agency or Civil Defense Director.

(6) In connection with articles or advertisements in newspapers, magazines, or other publications, or in connection with television or other public information media: *Provided,* Such use is not intended to discredit the Federal Emergency Management Agency or a Civil Defense Agency, or to mislead, confuse, misrepresent, defraud, or does not erroneously confer the impression of endorsement, approval, or relationship to the Federal Emergency Management Agency or a Civil Defense Agency.

(7) On the merit badge for "Emergency Preparedness" designed for and as authorized and awarded by the Boy Scouts of America, together with the reproduction of such merit badge on any publication or certificate of award to be used or issued by said organization in connection therewith.

(8) On such other items, whether official articles or not, as may be designated or approved by the Director, FEMA in writing.

(c) Without limitation of the foregoing, the reproduction of the prescribed insigne in connection with any publication or article used for political purposes is prohibited.

(d) No alteration or modification of the prescribed insigne may be made except as the Director may from time to time authorize.

§ 306.6 Distribution, issuance, and retail sale of the prescribed insigne.

No distribution, issuance, or retail sale of the prescribed insigne or official articles shall be made except upon the authorization of a Civil Defense Director; the Director, FEMA; or in accordance with the regulations in this chapter.

§ 306.7 Prohibited use of the prescribed insigne.

No person shall possess or wear the prescribed insigne or any other device in colorable imitation thereof with intent to deceive or mislead or for the purpose of inducing the false impression that such person is engaged in the performance of an authorized civil defense service or activity.

§ 306.8 Violations.

The manufacture, possession, or wearing by any person of the prescribed insigne or any device in colorable imitation thereof otherwise than in accordance with these regulations shall be unlawful and shall subject such person to a fine of not more than $1,000 or imprisonment of not more than one year, or both.

PART 307—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Sec.
307.1 Purpose.
307.2 Definitions.
307.3 Applicability.
307.4 Assurances required.
307.5 Compliance information.
307.6 Conduct of investigations.

AUTHORITY: Department of Defense Regulation, 32 CFR 300.14, 29 FR 19294, Dec. 31, 1964; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

SOURCE: 40 FR 3212, Jan. 20, 1975, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 307.1 Purpose.

(a) The purpose of the regulation in this part is to implement with respect to Federally assisted programs of the Federal Emergency Management Agency the regulation of the Secretary of Defense entitled "Non-Discrimination in Federally Assisted Programs of the Department of Defense—Effectuation of Title VI of the Civil Rights Act of 1964." (32 CFR Part 300.) The purpose of the DoD Regulation is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

(b) Pursuant to the DoD Regulation, the Director, FEMA, has been designated by the Assistant Secretary of Defense (Manpower and Reserve Affairs) as a "responsible Department official" responsible for implementing within the Department of Defense the DoD Regulation in connection with the administration of laws extending financial assistance for civil defense purposes.

(c) The DoD Regulation, as amended, has been approved by the President and contains all basic regulatory material necessary for proper effectuation of Title VI. It governs and is applicable to financial assistance programs of the Federal Emergency Management Agency and is not republished herein. The DoD Regulation does, however, require responsible Department officials to take certain implementing actions. The Regulation in this part specifies these actions as applicable to FEMA.

[40 FR 3212, Jan. 20, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979]

§ 307.2 Definitions.

The terms used herein shall have the meanings ascribed in § 300.2 of the DoD Regulation. In addition, the following terms have the following meanings:

(a) "CPG 1-9" means FEMA publication number CPG 1-9 entitled "nondiscrimination in federally assisted programs of the Defense Civil Preparedness Agency."

(b) "FEMA" means the Federal Emergency Management Agency.

(c) "Director" means the Director, FEMA.

(d) "DoD Regulation" means Department of Defense Regulation, 32 CFR Part 300.

(e) "Regional Director" means a Regional Director of FEMA.

[40 FR 3212, Jan. 20, 1975, as amended at 40 FR 6205, Feb. 10, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 307.3 Applicability.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Director pursuant to delegation or agreement. These programs are listed in CPG 1-9.

§ 307.4 Assurances required.

(a) Except as provided in paragraph (d) of this section, every applicant for Federal financial assistance (including, without limitation, assistance in the provision of a civil defense facility) to carry out a civil defense program shall execute an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to the DoD Regulation and this part. Execution of this assurance is a condition to approval of any application for Federal financial assistance and of the extension of any assistance thereunder.

(b) The assurance required by paragraph (a) of this section will be on FEMA Form 856. The assurance covers all FEMA Federal financial assistance afforded a recipient. The text is as follows:

> Name of Applicant ———— hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), all requirements imposed by or pursuant to the Regulation of the Department of Defense 32 CFR Part 300 (issued as Department of Defense Directive 5500.11, May 27, 1971) and all requirements of FEMA Regulation 44 CFR Part 307 issued pursuant to the Department of Defense Regulation to the end that, in accordance with Title VI of that Act, the Department of Defense Regulation and the FEMA Regulation, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Federal Emergency Management Agency, (herein called FEMA); and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement. If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by FEMA, or if such assistance is in the form of personal property or real property, or interest therein or structure, thereon, then this assurance shall obligate the Applicant or in the case of any transfer of such property, any transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for the period during which it retains ownership or possession of the property whichever is longer. In all cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by FEMA.
>
> This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the FEMA, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

(c) Copies of the assurance required by paragraph (a) of this section shall be submitted by an applicant for civil defense Federal financial assistance to FEMA in the manner described in CPG 1-9 and other FEMA guidance material.

(d) Pursuant to the DoD Regulation primary recipients (i.e. States) of assistance under Section 205 of the Federal Civil Defense Act submit Statements of Compliance (including methods of administration) in the manner prescribed in CPG 1-9 and other FEMA guidance material.

(e) The extent to which an assurance will be required of subgrantees, suballocatees, contractors, transferees, successors in interest, and other participants will be specified by the Director in CPG 1-9 and other FEMA guidance material.

(f) Assurances and Statements of Compliance (including methods of administration) submitted to the Office of Civil Defense, Department of the Army (the predecessor to FEMA) in the manner prescribed in regulatory material of that office are considered as submitted to FEMA and need not be resubmitted. An assurance or a Statement of Compliance (including methods of administration), unless withdrawn by the recipient is considered binding for so long as the recipient receives Federal financial assistance from FEMA.

§ 307.5 Compliance information.

(a) *Compliance reports.* Each recipient shall keep records and submit, through the Regional Director, to the Director timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Director may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. The times for submission of such reports, which shall be not less often than annually, and the form therefor shall be specified in CPG 1-9 and in other FEMA guidance material. In general, recipients should have available racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs. In any case where a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this part.

(b) *Access to sources of information.* Each recipient shall permit access by the Director, through the Regional Director or his other authorized representatives, during normal business hours to such of his books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(c) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as is set forth in CPG 1-9 and in other FEMA guidance material in order that such persons may be appraised of the protections against discrimination assured them by the Act, the DoD Regulation, and this part.

§ 307.6 Conduct of investigations.

(a) *Periodic compliance reviews.* Regional Directors or their authorized representatives shall conduct compliance reviews of the States and other recipients with such frequency and in such depth as may be prescribed by the Director.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may be himself, or by a representative, file with the Director a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Director.

(c) *Investigations.* The authorized representative of the Director will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph

(c) of this section indicates a failure to comply with this part, the Director will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in the DoD Regulation.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the Director will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

PART 308—LABOR STANDARDS FOR FEDERALLY ASSISTED CONTRACTS

Sec.
308.1 Purpose and scope.
308.2 Definitions.
308.3 Contract award requirements.
308.4 Contract provisions.
308.5 Examination of payrolls.
308.6 Compliance.
308.7 Certification of compliance.

Authority: Secs. 201(i), 401, 64 Stat. 1250, 1255, 50 U.S.C. App. 2281, 2253; Reorg. Plan No. 1 of 1958, 72 Stat. 1799-1801, 23 FR 4991; E.O. 10952, 26 FR 6577; 29 FR 5017, Apr. 10, 1964; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

Source: 29 FR 12366, Aug. 28, 1964, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

Note: Nomenclature change appears at 38 FR 16775, June 26, 1973.

§ 308.1 Purpose and scope.

The regulations in this part are supplemental to those contained in 29 CFR Part 5 and together they prescribe the labor standards applicable to construction work financed with the assistance of a contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) to any State (and political subdivision thereof, where applicable). The regulations in this part, to the extent that they vary from those published in 29 CFR Part 5, have been approved by the Secretary of Labor under 29 CFR Part 5 to meet the particular needs of the Federal Emergency Management Agency. To assure full labor standards compliance reference should be made to the regulations contained in 29 CFR Part 5 as well as those published herein.

[29 FR 12366, Aug. 28, 1964, as amended at 37 FR 2673, Feb. 4, 1972; 40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.2 Definitions.

Except where otherwise clearly required by the context, each of the following terms shall have the meaning defined in this section when used in the regulations in this part:

(a) *Building or work.* Construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work; including without limitation, buildings, structures, and improvements of all types such as shelters, ramps, roadways, parking lots, tunnels, mains, power lines, pumping and generator stations, terminals, plants, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such building or work as defined hereunder.

(b) *Construction.* All types of work done on a particular building or work at the site thereof, including without limitation, altering, repairing, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or the construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work by persons employed by the contractor or the subcontractor.

(c) *Contract.* Any contract which is entered into for actual construction, alteration, or repair, including painting and decorating, of a building or work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281).

(d) *Employed.* Every person paid by a contractor or subcontractor in any manner for his labor on construction work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist.

§ 308.3 Contract award requirements.

The obligations of the State, and of any political subdivision joining the State in its application for a Federal financial contribution under section 201(i) or section 205 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281, 2286), include, without limitation, the following:

(a) The requirement that the State include, verbatim, in each contract involving construction work in excess of $2,000 and cause to be included, verbatim, in each subcontract thereunder, the provisions prescribed in § 308.4 and cause to be attached the applicable wage determination decision of the Secretary of Labor.

(b) The requirement that each advertisement of an invitation to bid shall indicate expressly that if the construction phase of the contract exceeds $2,000:

(1) All laborers and mechanics employed by contractors or subcontractors in performance of the construction work shall be paid wages at rates not less than those determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any work-week, as the case may be, as provided in section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) and in the Contract Work Hours Standards Act (76 Stat. 357) and,

(2) Bid specifications shall contain the labor standards provisions prescribed in § 308.4 of this part and shall have attached thereto the wage determination decision of the Secretary of Labor applicable to the project.

[38 FR 31526, Nov. 15, 1973, as amended at 40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.4 Contract provisions.

Each contract involving construction work in excess of $2,000 and all subcontracts thereunder shall include as a part thereof the following labor standards provisions, in completed form, verbatim:

(a) *Minimum wages.* (1) All mechanics and laborers employed by the contractor or subcontractor in the performance of construction work hereunder will be paid unconditionally and not less than once a week and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor, the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particularly weekly period, are deemed to be constructively made or incurred during such weekly period.

(2) The contracting officer of the (write in the name of the State or political subdivision) shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State through the Federal Emergency Management Agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer of the (write in the name of the State or political subdivision) shall be referred by the State through the Federal Emergency Management Agency to the Secretary of Labor for final determination.

(3) The contracting officer of the (write in the name of the State or political subdivision) shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the contracting officer of the (write in the name of the State or political subdivision) shall be referred by the State through the Federal Emergency Management Agency to the Secretary of Labor for determination.

(4) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) *Overtime requirements.* (As used in this clause, the terms "laborers" and "mechanics" include watchmen and guards.) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of 8 hours in any calendar day or in excess of 40 hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than 1½ times his basic rate of pay for all hours worked in excess of 8 hours in any such calendar day or in excess of 40 hours in any such workweek, as the case may be.

(c) *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of paragraph (a) or (b) of this section the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, in the event of any violation of paragraph (b) of this section, such contractor and subcontractor shall be liable to the United States (in the case of work under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of paragraph (b) of this section, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (b) of this section.

(d) *Withholding for liquidated damages and unpaid wages.* The (write in the name of the State or political subdivision) may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (c) of this section. In the event of failure to pay any laborer or mechanic, including apprentices and trainees, employed by the contractor or subcontractor in the performance of construction work hereunder, all or part of the wages required by the contract, the (write in the name of the State or political subdivision) may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

(e) *Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(2) The contractor will submit weekly a copy of all payrolls to the (write in the name of the State or political subdivision) accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "weekly Statement of Compliance" which is required under this contract and the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the (write in the name of the State and the political subdivision, if any); the Federal Emergency Management Agency; and the Department of Labor; and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting State (or political subdivision, as applicable) that their employment is pursuant to an approved program and shall identify the program.

(f) *Apprentices and trainees*— (1) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (f)(2) of this section or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

(2) *Trainees.* Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(g) *Compliance with Copeland Regulations (29 CFR Part 3).* The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(h) *Ineligible bidders.* The contractor herein certifies as a condition of the contract that he is not listed on the Comptroller General's list of ineligible bidders published pursuant to regulations issued by the Secretary of Labor (29 CFR Part 5) and the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.). This certification shall constitute a warranty, the falsity of which will render void this contract or subcontract, as the case may be.

(i) *Subcontracts.* The contractor will insert in any subcontracts in paragraphs (a) through (h) and (j) of this section and such other clauses as the Federal Emergency Management Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(j) *Contract termination; debarment.* A breach of any of paragraphs (a) through (i) of this section may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

[40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.5 Examination of payrolls.

(a) In cases where the contract involves construction work in excess of $2,000, a certified copy of all payrolls and statements required to be submitted under the contract provisions prescribed in § 308.4, shall be checked by the State (or political subdivision, as applicable) against the applicable wage determination decision of the Secretary of Labor to verify labor standards compliance and to ascertain the following:

(1) That the rates paid to various classifications of employees are in conformity with the applicable wage determination decision.

(2) That each classification shown in the payrolls is a classification for which a rate was predetermined in the applicable wage determination decision.

(3) That there are included in the payrolls those classifications of workers who would logically perform the work performed during the weeks in question.

(4) That there is no disproportionate employment of laborers, helpers, apprentices or trainees.

(b) Unless transferred to the Federal Emergency Management Agency, the payrolls and statements shall be preserved by the State (or political subdivision, as applicable) for a period of three years from the date of completion of the contract and shall be produced at the request of the Secretary of Labor at any time during the three-year period.

[40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.6 Compliance.

In cases where the contract involves construction work in excess of $2,000:

(a) The State shall make (or cause the political subdivision to make) an "on the site" labor standards check, at least once during the project and at least every six months on projects of long duration, including without limitation the following:

(1) Interviewing of a representative number of employees including but not necessarily limited to one employee in each classification or craft to ascertain what work the employee is doing and his regular rate of pay. This information shall be checked against the payrolls and the applicable wage determination decision to verify compliance or noncompliance.

(2) Examining evidence of registration and certification with respect to apprenticeship and training plans to determine the correctness of classifications and any disproportionate employment of laborers, helpers, apprentices or trainees.

(b) In conducting investigations, including those of complaints of alleged violations (which shall be given priority) all statements, written or oral, made by an employee are to be treated as confidential and shall not be disclosed to his employer without the consent of the employee. All indications, including but not limited to all complaints, of alleged violations of labor standards brought to its attention shall be investigated by the State (or political subdivision at the State's direction) and the State shall require that all such indications brought to the attention of a political subdivision shall be forthwith brought to the attention of the State.

(c) If there is evidence of labor standards noncompliance, restitution shall be required of the contractor or subcontractor and the State (or political subdivision, as applicable) shall, after written notice to the contractor, withhold from the contractor such advances, guarantees and accrued payments as are administratively determined necessary to cover any liquidated damages and the restitution due laborers and mechanics employed by the contractor or subcontractor. The State (or political subdivision, as applicable) also has the option of terminating the contract in accordance with its provisions. If there is evidence that these violations were aggravated, willful, or resulted in underpayments of $500 or more, a detailed report, including information as to restitution made, payments, advances and guarantees of funds withheld, contract terminations, and the name and address of each laborer and mechanic and contractor or subcontractor affected, and the day or days of such violations, shall be submitted by the State to the Federal Emergency Management Agency. Except where the Federal Emergency Management Agency has expressly requested that the investigation be made, no report need be made where the underpayments total less than $500, if nonwillful, restitution has been made and the State has received assurance of future compliance.

[29 FR 12366, Aug. 28, 1964, as amended at 40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.7 Certification of compliance.

(a) After the beginning of construction (under a contract involving construction in excess of $2,000), no payment or advance to the contracting State (or where applicable, to the contracting political subdivision) shall be approved by the Federal Emergency Management Agency unless and until it has received a certification by the contractor that his contract and those of his subcontractors contain the provisions prescribed in § 308.4 and that he and his contractors have complied therewith, or that there is a substantial dispute with respect to the required provisions.

(b) Before making final payment on any contract involving construction work in excess of $2,000, the State (or political subdivision, as applicable) shall submit to the Federal Emergency Management Agency the following certification, verbatim, in completed form:

CERTIFICATE OF LABOR STANDARDS COMPLIANCE

Knowing that my statements will be relied upon by the Federal Emergency Management Agency, in its payment to the State under an approved project application for a Federal financial contribution under section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) I do hereby certify as follows:

1. That I am the Contracting Officer of ———— (write in the name of the political subdivision and/or State, as applicable), applicant under Federal Emergency Management Agency, Project Application No. ——.

2. That in my official capacity I have personally, or through authorized employee(s) of the above named applicant for purposes of this certification, completed the following: (i) Examinations of all contracts involving construction work in excess of $2,000 on the civil defense project covered by the aforementioned project application, and all subcontracts thereunder; (ii) examinations of all payrolls and statements required to be submitted under such contracts and comparison with the applicable wage determination decision of the Secretary of Labor as required by § 308.5 of Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations; and (iii) investigations of all indications of alleged labor standards violations including, without limitation, at least one "on the site" labor standards check, and other investigations as required by § 308.6 of Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations.

3. That, based upon the aforementioned examinations and investigations, I have determined that: (i) The labor standards provisions have been included and the applicable wage determination decision has been attached, all as a part of the conditions of each contract involving construction work in excess of $2,000 and all subcontracts thereunder as required by § 308.4 of Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations; and (ii) the contractor and all subcontractors were in compliance, or have come into compliance, with the labor standards provisions, wage determination decision and Copeland Regulations (29 CFR Part 3) except ———— (List names of all contractors not in compliance or if no exceptions, state "none") and $—— restitution is due to the employees of the listed contractor and/or subcontractors (set forth the amount or "none," in accordance with the facts).

———————— (LS)

————————
(Name of Contracting Officer)

————————
(Name of State or political subdivision)

————————
(Dated)

(50 U.S.C. App. 2251-2297; E.O. 10952, 26 FR 6577; DoD Dir. 5105.43, 37 FR 18636)

[40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

PART 309—FEDERALLY ASSISTED CONSTRUCTION

Sec.
309.1 Applicability.
309.2 Preapplication.
309.3 Application.
309.4 Facility selection.
309.5 Environmental considerations.
309.6 Title to site.
309.7 Real property acquisition.
309.8 Flood hazards.
309.9 Historic sites.
309.10 Access by the handicapped.
309.11 Labor standards.
309.12 Equal employment opportunity.
309.13 Award of contracts.
309.14 Bonds.
309.15 Clean air.
309.16 Records retention and inspection.

AUTHORITY: Sec. 401(g), 201(i), 205, 64 Stat. 1245-1257, 50 U.S.C. App. 2251-2297; Reorganization Plan No. 1 of 1958, 72 Stat. 1799; Executive Order 10952, "Assigning Civil Defense Responsibilities to the Secretary of Defense and Others," July 20, 1961; order of the Secretary of Defense establishing the Defense Civil Preparedness Agency as an agency of the Department of Defense, FR Doc. 72-15636, filed Sept. 13, 1972, 37 FR 18636; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239).

SOURCE: 38 FR 16775, June 26, 1973, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 309.1 Applicability.

This part concerns federally assisted contracts and projects which pertain solely or principally to construction work. In it are prescribed procedures, criteria, terms, and conditions which are in addition to those prescribed in 44 CFR Part 301 and in detailed guidance material which is promulgated over the signature of the Director, Federal Emergency Management Agency (FEMA), distributed to each State, and made available to each participating political subdivision.

[38 FR 16775, June 26, 1973, as amended at 38 FR 28660, Oct. 16, 1973. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 309.2 Preapplication.

Except as may otherwise be specifically required or permitted under written criteria and procedures promulgated over the signature of the Director, Federal Emergency Management Agency, which are distributed to each State and made available to each participating political subdivision, preapplication shall be made for each construction project for which the need for Federal funding exceeds $1,000. The standard form, "Preapplication for Federal Assistance" (No. 80-R-0187, Exhibit M-1, OMB Circular A-102) shall be used.

[38 FR 28660, Oct. 16, 1973. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 309.3 Application.

The standard form Application for Federal Assistance (for construction programs) set forth as exhibit M-4 of OMB Circular A-102 shall be used. The project application includes, as a part thereof, certain enumerated assurances and certifications together with an assurance and certification by the applicant that it will comply with the regulations, policies, guidelines, and requirements, including OMB Circulars Nos. A-87, A-95, and A-102, as they relate to the application, acceptance and use of Federal funds for the federally assisted project.

[38 FR 16775, June 26, 1973, as amended at 38 FR 18372, July 10, 1973. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 309.4 Facility selection.

When feasible, the State or political subdivision, in providing for civil defense needs must make use of (a) existing facilities, or (b) a facility which is to be acquired or constructed for a principal function other than civil defense (e.g., municipal office building, courthouse, police, or fire station). The Federal Emergency Management Agency (FEMA) may contribute toward such of the planning, design, construction, and equipment costs as it determines to be directly attributable to use of a portion of the facility for civil defense functions (e.g., inclusion of an emergency operating center in the basement area of a courthouse). When neither of these two alternatives can be effected, FEMA will consider requests for financial contributions toward the costs of planning, designing, constructing, and equipping a facility which is determined by FEMA to be required principally for civil defense functions.

§ 309.5 Environmental considerations.

FEMA contributions toward the costs of planning, designing, constructing, and equipping a facility which it determines to be required principally for civil defense functions are subject to the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332) including the requirement of section 102(2)(C) of NEPA for a detailed environmental statement where the action is a major action significantly affecting the quality of the human environment. Before making the final selection of a site for a facility which is determined by FEMA to be required principally for civil defense functions and for which FEMA is requested to make a financial contribution toward any of the planning, design, construction, and equipment costs, the State shall assess the environmental consequences of the proposed action. Such assessment will be made in accordance with guidance, including regulatory material, furnished by FEMA (such as the guidelines of the Council on Environmental Quality). If it is determined that the action is not a major action significantly affecting the quality of the human environment, the assessment will be reduced to writing and made an attachment to the project application for inclusion in the review process. If it is determined that the action is a major action significantly affecting the quality of the human environment, the State shall prepare a draft environmental impact statement and process it in accordance with guidance furnished by FEMA, which statement will accompany the project application through the review process.

§ 309.6 Title to site.

The applicant State or its political subdivision, joining in the application, shall have or will obtain a fee simple or such other estate or interest in the site, including access thereto, as is sufficient to assure undisturbed use and possession of the premises for civil defense purposes for a period not less than the useful life of the facility.

§ 309.7 Real property acquisition.

(a) When acquiring real property for a facility which is determined by FEMA to be required principally for civil defense functions and for which FEMA is requested to make a financial contribution toward any of the planning, design, construction, and equipment costs, the State or political subdivision, as the case may be, will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (hereinafter referred to as the Relocation Act) and property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Relocation Act. No project application will be approved for a financial contribution toward the costs of planning, design, construction, or equipping of any facility which is determined by FEMA to be required principally for civil defense functions and for which the acquisition of real property will result in the displacement of any person, unless and until FEMA receives satisfactory assurances from the State, and where applicable its political subdivision, that the above referenced requirements will be met and that:

(1) Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of the Relocation Act;

(2) Relocation assistance programs offering the services described in section 205 of the Relocation Act, shall be provided to such displaced persons;

(3) Within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3) of the Relocation Act; and

(4) The affected persons will be adequately informed of the available benefits and the policies and procedures relating to the payment of these benefits.

(b) Compliance with sections 301 and 302 of the Relocation Act is required where legally possible under State law. In providing the assurance that it will be guided to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302 of the Relocation Act, if the State or political subdivision indicates it is unable to comply fully, its statement shall be supported by an opinion of its chief legal officer containing a full discussion of the issues involved and citing legal authority in support of its conclusion.

(c) The cost to the State or political subdivision in providing payments and assistance pursuant to sections 206, 210, 215, and 305 of the Relocation Act shall be included as part of the cost of the FEMA approved project, and shall be eligible for a financial contribution in the same manner and to the same extent as other costs of the project. No payment or assistance under section 210 or 305 of the Relocation Act shall be included as a project cost if the displaced person receives a payment required by the State law of eminent domain which is determined by FEMA to have a substantially equivalent purpose and effect and to be part of the cost of the project.

§ 309.8 Flood hazards.

In accordance with the provisions of Executive Order No. 11296, August 10, 1966, the applicant State or its political subdivision, joining in the application, shall evaluate flood hazards in connection with the facility and as far as practicable, avoid the uneconomic, hazardous, or unnecessary use of flood plains in connection therewith.

§ 309.9 Historic sites.

There shall be submitted for each application a description of the relationship to and probable effect, or lack of effect, on any building, structure, object, site, or district that is included in the National Register of Historic Preservation of the National Park Service (published with periodic updatings in the FEDERAL REGISTER). Such information shall be furnished FEMA in sufficient time for consideration prior to determination of approval or disapproval of the project application.

§ 309.10 Access by the handicapped.

Where the construction is for a building or facility, the intended use of which will require accessibility to the public, or may result in the employment therein of handicapped persons, the applicant shall require it to be designed to comply with the American Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped A117.1-1961, as modified (41 CFR 101-17.703). The State, or its political subdivision joining in the application, will be responsible for conducting inspections to insure compliance by the contractor.

§ 309.11 Labor standards.

Each contract involving construction work in excess of $2,000 and all subcontracts thereunder shall include the labor standards provisions as prescribed in FEMA regulations entitled "Labor Standards for Federally Assisted Contracts," approved by the Secretary of Labor, and shall be subject to compliance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-7) respecting wage rates for federally assisted construction contracts in excess of $2,000; the Copeland "Anti-Kickback" Act (40 U.S.C. 276c); and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). See FEMA regulations at 44 CFR Part 308 and regulations of the Secretary of Labor at 29 CFR Parts 3, 5, 5a, and 1518.

§ 309.12 Equal employment opportunity.

All contracts in excess of $10,000 shall include provisions for compliance with Executive Order No. 11246, including any amendments thereto, as supplemented in Department of Labor regulations appearing at 41 CFR Chapter 60, and Department of Defense regulations, applicable to federally assisted construction, appearing at 32 CFR Part 12, Subpart H. By operation of the executive order, the equal opportunity clause for federally assisted construction contracts shall be considered to be part of every contract and subcontract required by the Executive Order and the aforesaid regulations to include such a clause whether or not it is physically incorporated in such contracts. Each contractor shall be required to have an affirmative action plan which declares that it does not discriminate on the basis of race, color, religion, creed, national origin, sex, and age and which specifies goals and target dates to assure implementation of that plan. The State and each political subdivision joining in an application shall establish procedures to assure compliance with this requirement by contractors and to assure that suspected or reported violations are promptly investigated. In certain geographic areas designated by the Office of Federal Contract Compliance for special attention, Federal or locally established plans may require prospective contractors on projects in such areas to state, in their bids or proposals, approved percentage goals for minority employment which they will endeavor to meet during contract performance.

§ 309.13 Award of contracts.

Except for specific cases where a substitute procedure of prequalification and selective solicitation is approved by FEMA (and except for contracts of $10,000 or less), formal advertising, sealed bids, and public openings are the required method for award of construction contracts. In addition, the requirements of State and local law must be met.

[38 FR 16775, June 26, 1973, as amended at 40 FR 30114, July 17, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 309.14 Bonds.

In contracting for construction, the State or political subdivision, as the case may be, shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the following minimum requirements shall be met:

(a) Obtain from each bidder a bid guarantee equivalent to 5 percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) Obtain a performance bond for 100 percent of the contract price to secure fulfillment of all the contractor's obligations under the contract.

(c) Obtain a payment bond on the part of the contractor for 100 percent of the contract price to assure payment as required by law of all persons supplying labor and material in execution of the work provided for in the contract.

§ 309.15 Clean air.

Contracts in excess of $100,000 shall contain a provision which requires compliance with the applicable standards, orders, and regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the appropriate regional office of the Environmental Protection Agency.

§ 309.16 Records retention and inspection.

Records for a facility constructed with the assistance of Federal funds shall be retained and made available for three years after its final disposition. This requirement is in addition to: (a) Regular records retention and inspection requirements prescribed for all FEMA contributions projects, in accordance with OMB Circular A-102; and (b) the provisions of the equal opportunity and labor standards clauses set forth in Part 12, Subpart H of Title 32, and Part 308 of Title 44 of the Code of Federal Regulations, requiring the maintenance and availability of payrolls, books, accounts, and other records of contractors and subcontractors.

[38 FR 28660, Oct. 16, 1973. Redesignated at 44 FR 56173, Sept. 28, 1979]

PART 310—ORGANIZATION, ACTIVITIES, AND GENERAL STATEMENTS OF POLICY

Subpart A—Organization, Activities, and Delegations of Authority

Sec.

310.6 Delegations of authority.

Subpart B—Statements of General Policy and Interpretive Rules

310.20 Civil preparedness guides and circulars.

Subpart A—Organization, Activities, and Delegations of Authority

§ 310.6 Delegations of authority.

Pursuant to the authority granted, the Director, FEMA, by this section, redelegates certain of his authority. Other than those dealing with internal management matters not of interest to the general public, the redelegations to FEMA officials or, in their absence, the persons acting for them, are set out herein. Exercise of this redelegated authority is subject to the direction, control, and authority of the Director, Federal Emergency Management Agency, and is to be in accordance with law and Federal agency regulations applicable to FEMA programs and assistance, FEMA regulations, FEMA policies, directives, and instructions. Except as otherwise provided herein, or as is limited by law, directive, regulation or prior delegation, the powers and authorities delegated may be further redelegated in writing.

(a)-(b) [Reserved]

(c) *Regional Directors.* Power and authority, with regard to the respective region, including the taking of final action as is required in the administration and operation of FEMA with regard to the following described matters:

(1) Approval, disapproval, modification or amendment of requests from the States related to financial contributions for civil defense materials and facilities and personnel and administrative expenses pursuant to sections 201(i) and 205 of the Federal Civil Defense Act of 1950, as amended.

(2) With respect to Federal surplus personal property, determination, on an individual case basis, of surplus property which does not so appear in the representative lists of categories of property (presently known as the "U&N" list and contained in Civil Preparedness Guide 1-3) to be usable and necessary for the civil defense program of a specific proposed donee for the purposes of donation under the Federal Property and Administrative Services Act of 1949, as amended.

(3) With respect to Federal surplus personal property donated for civil defense purposes under section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 494(j), and having an original single item acquisition cost to the United States of two thousand five hundred dollars ($2,500) or more but less than one hundred thousand dollars ($100,000), subject to the disapproval of the Administrator of General Services within 30 days after notice to him of any action to be taken:

(i) Determining and enforcing compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such property was transferred;

(ii) Reforming, correcting, or amending any such instrument; and

(iii) Granting releases from any of the terms, conditions, reservations, and restrictions contained in, and releasing to the donee any right or interest reserved to the United States by such instrument, if the Regional Director determines that the property so transferred no longer serves the purpose for which it was donated or that the release will not prevent accomplishment of such purpose: *Provided,* That any such release may be granted on, or made subject to, such terms and conditions as the Regional Director shall deem necessary to protect or advance the interests of the United States.

(4) Procurement of materials, supplies, equipment, and services, including the making of necessary findings and determinations with respect thereto for the following FEMA programs for the States:

(i) Radiological System Maintenance (RSM);

(ii) National Communications System (Radio) Agreements (NACOM II) or Civil Defense National Radio System (CDNARS) Agreements;

(iii) State Training Seminars (STS);

(iv) Nuclear Civil Protection Planning Contracts (NCP);

(v) Regional Training Program;

(vi) Shelter Survey and Marking; and

(vii) On a case-by-case basis, Emergency Broadcast Station Protection program (EBS).

(5) Procurement of supplies and services other than personal for civil defense purposes not in excess of $10,000 per order from governmental or nongovernmental sources. Established government sources shall be utilized to the maximum extent possible in the procurement of supplies and services.

(6) Issuance of U.S. Government Bills of Lading not to exceed $2,500 per order; arranging for and acquiring through General Services Administration of space and facilities for regional and field offices not to exceed $10,000 per order.

(7) Approving of invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, assigned civil defense activities.

(8) Determining, on a case basis, that the loan of Federal personal property to a Federal Emergency Management Agency financial assistance program applicant will result in a reduction in cost to the government or enhancement of the civil defense capability accruing from the project, either or both, as the case may be; entering into and executing agreements (FEMA Form 251) for the loan of Federal personal property to fulfill civil defense contributions program objectives; and taking such other action necessary to carry out the loan program, as provided in Civil Preparedness Guide (CPG) 1-3 and FEMA Instruction 9560.2.

The authorities and functions herein delegated in this section cannot be further redelegated. However, without being relieved of his responsibility therefor, each Regional Director is authorized to excercise and perform any of the above powers and authorities through such personnel of his region as he may in writing designate.

(d) *Director, Staff College.* Power and authority to:

(1) Procure supplies or services not in excess of $10,000 per order.

(2) Procure supplies and services available from GSA, Federal Supply Service, government depots as appropriate, or from Federal Supply Service contracts, not in excess of $10,000 per order.

(3) Issue U.S. Government Bills of Lading not to exceed $2,500 per order.

(4) Approve invitational travel to persons serving without compensation whose consultative, advisory, or other specialized technical services are required in a capacity that is directly related to, or in connection with, assigned civil defense activities.

(5 U.S.C. 552(a); 32 CFR 296; 50 U.S.C. App 2251-2297; Executive Order 10952, 3 CFR 1959-1963 Comp., p. 479; DOD Directive 5105.43; 37 FR 18636; Executive Order 11795, 39 FR 25939; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239))

[42 FR 34878, July 7, 1977. Redesignated and amended at 44 FR 56173, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979]

Subpart B—Statements of General Policy and Interpretive Rules

§ 310.20 Civil preparedness guides and circulars.

(a) The Federal Civil Defense Guide (FCDG) and publications keyed to the FCDG are being replaced by the Civil Preparedness Guide (CPG) and the Civil Preparedness Circular (CPC) series which will be used for presenting national civil defense policy and operational guidance to Federal, State, and local government officials and staff members and to representatives of industry and organizations. References to FEMA guidance material (including the Federal Civil Defense Guide) contained in FEMA regulations as set forth in Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations are interpreted to include portions of the CPG and CPC issuances which have been promulgated as replacing Federal Civil Defense Guide and other prior issuances.

(b) The following types of material are published in the CPG series:

CPG-1 Series—Guidance intended for all State and local civil preparedness directors and for others with emergency responsibilities. An example of material published, or to be published, in this series is CPG 1-3 Federal Assistance Handbook. This book furnishes guidance and information on Federal assistance made available by FEMA to States and through States to local governments. Another example is CPG 1-9 Nondiscrimination in Federally Assisted Programs. This book contains information about FEMA implementation of Title VI of the Civil Rights Act of 1964.

CPG-2 Series—Guidance intended for limited distribution to special audiences. However, distribution of this series will always be made to the civil preparedness directors of the States, Territories and possessions. Material published contains planning and operating instructions for communications, warning, RADEF emergency information and similar items.

CPC Series—A circular is used to issue information, notices, and announcements which are transitory, and instructions requiring a one-time action. Circulars may also be used to announce FEMA program and procedural changes pending issuance in the CPG series. A circular is cancelled after the action has been taken or the event takes place. CPC issuances are numbered in chronological order by year; for example, CPC 77-7 would be the seventh circular issued in calendar year 1977.

(5 U.S.C. 552(a); 32 CFR 296; 50 U.S.C. App 2251-2297; Executive Order 10952, 3 CFR 1959-1963 Comp., p. 479; DOD Directive 5105.43; 37 FR 18636; Executive Order 11795, 39 FR 25939); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12148 (44 FR 43239))

[42 FR 34878, July 7, 1977. Redesignated and amended at 44 FR 56173, Sept. 28, 1979]

PART 311—FEDERAL EMPLOYEE EMERGENCY IDENTIFICATION CARD

Sec.

311.1 Purpose.
311.2 Background.
311.3 Description of card.
311.4 Authorized agencies.
311.5 Issuance criteria.
311.6 Procedure for procurement of Federal Emergency Management Agency Form 12-11.
311.7 Responsibilities.
311.8 Related functions of Director, Federal Emergency Management Agency.
311.9 Exceptions from coverage.
311.10 Effective date.

Authority: Secs. 201, 204, 407 of the Federal Civil Defense Act of 1950, as amended; 50 U.S.C. App. 2251 *et seq.;* Reorganization Plan Number 3 of 1978, 43 FR 41943; and Executive Order 12148 of July 20, 1979, 44 FR 43239.

Source: 45 FR 43200, June 26, 1980, unless otherwise noted.

§ 311.1 Purpose.

The purpose of the regulation in this part is to establish a uniform identification system for Federal employees designated to perform essential duties during an emergency as described in Paragraph 2.

§ 311.2 Background.

Upon an attack on the United States, or upon a declaration by the President, or the Congress, or by a Federal Government official duly authorized by the President or the Congress, that an emergency situtation exists due to an expected attack on the United States or a natural or man-caused disaster occurs, or is expected within the United States, Federal employees, who have been assigned emergency duty functions, are expected to be in need of freedom of movement in order to report for and carry out their emergency assignments. To facilitate such mobility and freedom of movement, a uniform means of identification is required to enable State and local civil defense authorities and law enforcement officials to readily recognize such Federal employees. Accordingly, this part establishes a standard identification card prescribed for issuance by authorized Federal departments, agencies and officials, in accordance with definitive issuance criteria, to Federal emergency employees.

§ 311.3 Description of card.

A red-bordered laminated, numbered identification card, overall size 2⅜ inches x 3⅝ inches, has been prescribed for this purpose. Printed on the face in the top red-border in black type are the words, "Federal Employee Emergency." The left part of the card contains the seal of the Federal Emergency Management Agency. The right portion of the card contains a photograph of the holder (black and white or color photograph is acceptable) and, immediately under the photograph, the holder's name, signature and emergency function appear. To the right of the photograph, the holder's date of birth, height, weight, color of hair, color of eyes, and blood type appears. The bottom red border contains the words, "Identification Card" in black type. The reverse side of the card contains in the left portion the following:

> The person described on this card has essential emergency duties for the Federal Government. Request full assistance and unrestricted movement be afforded the person to whom this card is issued.

This is overprinted on the Federal Emergency Management Agency logo. Immediately under this appears the name of the issuing agency, followed by the signature and title of the issuing official. The lower bottom portion contains a pre-printed card number, date of issue, expiration date, and FEMA form number. The upper left part of this reverse side of the card contains the Government penalty statement on misuse, counterfeiting or alteration of the card. Immediately below this, the return postage guarantee statement appears.

§ 311.4 Authorized agencies.

(a) The departments, agencies and Federal officials listed below are authorized to issue the identification card described in this part:

Executive Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Treasury

Agencies

Community Services Administration
Civil Aeronautics Board
Environmental Protection Agency
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Home Loan Bank Board
Federal Mediation and Conciliation Service
Federal Reserve Board
General Services Administration
Government Printing Office
International Communication Agency
Interstate Commerce Commission
National Aeronautics and Space Administration
National Communications System
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Telecommunications and Information Administration
Nuclear Regulatory Commission
Office of Personnel Management
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Tennessee Valley Authority
U.S. International Trade Commission
U.S. Postal Service
Veterans Administration

Executive Office of the President

Central Intelligence Agency
Council of Economic Advisors
Council on Environmental Quality
Council on Wage and Price Stability
Domestic Affairs and Policy Staff
National Security Council
Office of Administration
Office of Management and Budget
Office of Science and Technology Policy
Special Representative for Trade Negotiations
White House Office

Office of the Vice President

The White House Military Office for the White House Office Staff and the Vice President's Staff
The Clerk, United States Supreme Court
The Director, Administrative Office of the United States Courts for the Judicial Branch of the Federal Government
The Architect of the Capitol, for the Legislative Branch of the Federal Government.

(b) *Additions to the authorized list.* Departments, agencies or Federal officials not included in the list of this section may request the Director of the Federal Emergency Management Agency to authorize use of the identification card prescribed by this regulation. Approval of such requests will be based on adequate justification of the need for such identification.

[45 FR 43200, June 26, 1980; 45 FR 59880, Sept. 11, 1980]

§ 311.5 Issuance criteria.

(a) The identification card described in Section 311.3 will be issued by authorized departments and agencies to Federal employees designated to perform emergency duties for the Federal Government at an emergency duty assignment following the declaration of an emergency as described in § 311.2.

(b) The identification card will be issued for a period not to exceed five years. The expiration date will be indicated on the card.

§ 311.6 Procedure for procurement of Federal Emergency Management Form 12-11.

(a) Each department, agency and official listed in § 311.4, and those later approved by the Director of the Federal Emergency Management Agency for inclusion under the provisions of this part, will review the issuance criteria prescribed in § 311.5 and determine the number of Federal employees requiring a Federal Employees Identification Card.

(b) The name of the department, agency or official issuing the identification card shall not be printed on the card. Each issuing department, agency and official will be responsible for assuring that all spaces on the cards are properly filled in by typewriter.

(c) Blank identification cards will be prenumbered in sequence, beginning with "1001." Issuance control will be maintained by the FEMA Office of Finance and Administration. The cards will be stocked and issued as controlled items. Issuance will be restricted to the department, agencies and officials authorized in § 311.4 to issue such cards. The FEMA Office of Finance and Administration will maintain records of such issues, and upon request, provide data on total cumulative issues to the FEMA Office of Plans and Preparedness.

(d) Each authorized issuing department, agency and official will submit a separate purchase order for necessary supplies of FEMA Form 12-11 to the FEMA Office of Plans and Preparedness, who will approve/disapprove the order for the processing and delivery.

§ 311.7 Responsibilities.

Each department, agency or official authorized to issue the prescribed emergency identification card is responsible for:

(a) Strict adherence to the established issuance criteria prescribed in § 311.5. These cards may be issued only to Federal employees designated to perform emergency duties.

(b) Completion of entries and affixing of photographs, laminating the cards, and maintaining records to enable the issuing official to trace the card to the individual to whom it is issued.

(c) Maintaining an accountability record of all blocks of cards received. An entry indicating ultimate disposition of the card by the activity will be required.

(d) Maintaining a record indicating the card numbers, dates and names of all personnel to whom the card has been issued.

(e) Reviewing annually the assignments of all personnel to whom such cards have been issued, to determine if the holders continue to qualify under the prescribed issuance criteria.

(f) Recalling cards issued to personnel whose emergency assignments are withdrawn. Cards recalled need not be cancelled.

(g) Insuring that cards issued to personnel required to report to a State control center or other locally controlled emergency center are authenticated by the appropriate State or local official to permit access to such centers in an emergency.

(h) Maintaining records and reporting upon request to the Director of the Federal Emergency Management Agency, the following:

(1) The number of cards issued and outstanding to Federal; employees.

(2) The card numbers and names of personnel to whom the cards have been issued.

(3) Total number of cards recalled and in safekeeping.

(4) Total number of cards destroyed.

(5) Total number of cards lost or unaccounted for.

(6) Cards available for issue.

(i) Regaining possession of and destroying all FEMA Form 12-11's from personnel whose employment with the issuing agency has ceased.

(j) Providing FEMA with copies of any directives published to implement the provisions of this regulation.

§ 311.8 Related functions of director of the Federal Emergency Management Agency.

(a) Assure that all Federal authorities are familiar with and will recognize the emergency identification cards issued under the provisions of this part.

(b) On an annual basis, request the State Civil Preparedness Directors to bring this part to the attention of local civil authorities, and all law enforcement officials.

(c) Act on requests of departments, agencies and Federal officials who apply for authority to issue the identification card to employees designated to perform emergency duties.

(d) Periodically review the criteria and controls established by this part and issue revisions, as necessary.

(e) Review reports submitted on number of cards issued or outstanding, and where necessary, request additional information on the need for the number of cards issued by a department, agency or official.

§ 311.9 Exceptions from coverage.

Active and reserve military Coast Guard personnel, and officers of the Commissioned Corps of the U.S. Public Health Service, in or out of uniform under orders to report to an emergency duty post or installation, will not be provided the identification card prescribed by this part. Such personnel will rely on the identification provided by the appropriate military department.

[45 FR 43200, June 26, 1980; 45 FR 59880, Sept. 11, 1980]

§ 311.10 Effective date.

June 26, 1980.

PARTS 312–319—[RESERVED]

PART 320—DISPERSION AND PROTECTIVE CONSTRUCTION: POLICY, CRITERIA, RESPONSIBILITIES (DMO-1)

Sec.
320.1 Policy.
320.2 Criteria.
320.3 Responsibilities.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; Executive Order 12148, 44 FR 43239.

Source: 45 FR 44575, July 1, 1980, unless otherwise noted.

§ 320.1 Policy.

It is the policy of the United States to encourage and, when appropriate, to require that new facilities and major expansions of existing facilities important to national security be located in so far as practicable, so as to reduce the risk of damage in the event of attack; and to encourage and, when appropriate, require the incorporation of protective construction features in new and existing facilities to provide resistance to weapons effects suitable to the locations of said facilities.

§ 320.2 Criteria.

(a) The distance of a facility from the probable area of destruction is the controlling factor in reducing the risk of attack damage to such facility. In determining the appropriate distance consideration will be given to all relevant factors, including:

(1) The most likely objects or targets of enemy attack, such as certain military, industrial, population, and governmental concentrations.

(2) The size of such targets.

(3) The destructive power of a large yield weapon or weapons suitable to the particular target.

(4) The gradation of pressures and thermal radiation at various distances from an assumed point of detonation.

(5) The characteristics of the proposed facility, including underground and built-in protective construction features, with respect to its resistance

to nuclear, chemical, and unconventional weapons.

(6) The degree of damage which a facility could sustain and still remain operable.

(7) The ground environment or natural barriers which might provide added protection to the facility.

(8) The economic, operational, and administrative requirements in carrying out the function for which the facility is to be provided.

(b) While no single distance standard and no single set of protective construction specifications against nuclear, chemical and unconventional weapons are feasible for all situations, the above factors will be applied so as to achieve the most protection practicable for a specific situation.

§ 320.3 Responsibilities.

(a) All departments and agencies of the Executive Branch of the Federal Government are responsible for adherence to the policy and criteria herein set forth with respect to programs under their control. Without limitation, specific reference is made to the following:

(1) All agencies:

(i) Programs for minimizing the vulnerability of the mobilization base (DMO I-4, paragraph 17);

(ii) Consideration of dispersed location and protective construction in the review of application for tax amortization (DMO III-1, paragraphs 4 and 5);

(iii) Application of Dispersion Standards to Facilities of the Executive Branch, in accordance with policy and standards issued by the Director, Federal Emergency Management Agency.

(2) Department of Defense—Programs for maximum use of dispersed plants, and development of standards for strategic locations and physical security. (DMO I-12, paragraph 2, g, h, and o.)

(3) Department of the Interior—Programs for continuity of production of certain assigned industries.

(4) Department of Agriculture—Programs for operation of vital food facilities.

(5) Department of Commerce—Programs for dispersion and continuity of production.

(6) Federal Emergency Management Agency—Development and coordination of plans and programs for the reduction of urban vulnerability.

(b) The Department of Commerce is responsible for providing guidance and assistance to departments and agencies of the Federal Government, to industry, public and private persons and organizations including local Dispersion Committees, in the application of the policy and criteria contained herein.

(1) By agreement between the Department of Defense and the Department of Commerce, Department of Defense will provide guidance on certain industrial and other non-military projects in which it has a direct and special interest.

(2) The Department of Commerce may make similar arrangements with other departments and agencies to provide guidance on projects in which they have a direct and special interest, provided that reasonable safeguards to assure consistency and uniformity in the application of the policy and standards are maintained.

(3) The Department of Defense is responsible for the application of this policy to military projects without consultation with the Department of Commerce, but with due regard to the location of other vital facilities and plans for reduction of urban vulnerability as developed by the Federal Emergency Management Agency.

(c) The Federal Emergency Management Agency, responsible for the development and coordination of plans and programs for the reduction of urban vulnerability, is responsible for integrating at the metropolitan target zone level dispersion actions with all other measures which can make urban areas less attractive targets. It is also responsible for promulgating construction standards and specifications for the protection of persons and property from nuclear and unconventional weapons effects. The Department of Commerce and all others concerned will be governed by such standards in rendering the guidance and assistance described in paragraph (b) of this section.

PART 321—MAINTENANCE OF THE MOBILIZATION BASE (DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY, MARITIME ADMINISTRATION)

Sec.

321.1 General.
321.2 Selection of mobilization base.
321.3 Maintaining the mobilization base.
321.4 Achieving production readiness.
321.5 Retention of industrial facilities.
321.6 Participation of small business.
321.7 [Reserved]
321.8 Reports.

AUTHORITY: National Security Act of 1947, as amended 50 U.S.C. 404; Defense Production Act of 1950, as amended; 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; Executive Order 12148 (44 FR 43239).

SOURCE: 45 FR 44576, July 1, 1980, unless otherwise noted.

§ 321.1 General.

A sustained state of mobilization production readiness is necessary to place the United States in a defense posture which will enable the nation to defend itself against aggression in peripheral conflicts or general war involving nuclear attacks on this country. Therefore, the facilities, machine tools, production equipment, and skilled workers necessary to produce the wartime requirements of the Department of Defense, Department of Energy, and the Maritime Administration shall be maintained in a state of readiness which will facilitate their immediate use or conversion in time of emergency, with especial emphasis on measures to maximize the probability of continued post-attack production of those items judged to be vital to survival and victory.

§ 321.2 Selection of the mobilization base.

(a) The Department of Defense shall select, for its mobilization base, facilities which produce or are capable of producing critically important military items or components (military class A components used entirely in the production, maintenance, or repair of military items) which meet one of the following:

(1) Those items which would be so urgent to the defense of this country that utmost effort must be exerted to produce them even in case of general war involving severe damage to the facilities necessary to produce these items and the components thereof.

(2) Those items essential to survival and retaliation, maintenance of health, or combat efficiency required to support peripheral war and which meet one or more of the following criteria:

(i) Items requiring a long lead-time or long manufacturing cycle.

(ii) Items currently not in production or which are required in quantities far in excess of peacetime production.

(iii) Items requiring the conversion of an industry or a number of plants within an industry.

(iv) Items requiring materials or manufacturing processes essentially different from those in current use.

(v) Items for which industry does not have production experience.

Paragraph (a)(2) of this section is inclusive of the Department of Defense Preferential Planning List of End Items.

(b) In selecting facilities for the Department of Defense mobilization base, consideration shall be given to their vulnerability to nuclear attack, with particular attention to the possibility of (1) minimizing vulnerability of facilities producing "urgent" items under paragraph (a)(1) of this section, including the need for dispersal, protective construction, and special security measures to safeguard against sabotage of clandestine attack, and (2) reducing concentration of uncommon critical production facilities so that a productive segment of each critical industry would be likely to survive a nuclear attack.

(c) The Department of Energy and the Maritime Administration, in cooperation with the Federal Emergency Management Agency, shall determine the items and facilities which meet the above criteria for their respective programs for maintaining the mobilization base.

§ 321.3 Maintaining the mobilization base.

(a) Facilities selected to produce "urgent" items shall be maintained within limits of existing procurement authority and funds available by the Department of Defense, the Department of Energy, and the Maritime Administration in the following manners to the maximum practical degree:

(1) Current procurement shall be placed in these facilities to the extent which will maintain them in a state of readiness compatible with the plans of the procuring agency.

(2) Machine tools and production equipment will be installed in these facilities to the extent found necessary by the procuring agency.

(3) Develop and maintain plans for alternate production capacity in case disaster destroys current facilities, such capacity to be located to the maximum extent possible away from highly concentrated industrial areas and major military installations.

(b) Other facilities selected as part of the mobilization base, shall be maintained to the fullest extent possible.

(1) Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

(2) Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government.

(3) Planned producers that are deemed to be a part of the mobilization base will be invited to participate in appropriate current procurement.

(4) Upon expiration of current procurement contracts in a facility, the procuring agency shall take such of the following actions as are compatible with its plans for maintaining a state of readiness:

(i) *Government-owned facilities and tools.* Within the limitations that may be imposed by Congressional appropriations, place government-owned facilities and tools in standby status and establish provisions for their adequate maintenance. This does not preclude the use of government-owned production equipment, on a loan basis, to enable the military departments to meet current production schedules, as provided in DMO-VII-4, Amendment 1.

(ii) *Privately-owned facilities and government-owned tools.*

(A) Arrange with management of privately-owned facilities, wherever possible, to place government-owned tools and production equipment in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe location.

(B) Arrange with management, on a voluntary basis, to keep a group of key managers, engineers, and skilled workers familiar with the items planned for mobilization production.

(C) Determine the gaps which exist in government-owned packages of tools and production equipment needed to produce mobilization requirements in privately-owned plants. Within the limit of fund availability, plan the procurement of such tools and equipment with priority being given to long lead-time tools and equipment or those not used in general manufacturing. These tools and equipment, when procured, should be placed in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe locations.

(D) Determine which government-owned tools and equipment have become obsolete, or which would not be used in event of mobilization, and plan for their disposal in accordance with the provisions of DMO-VII-4, as amended.

§ 321.4 Achieving production readiness.

(a) In order to achieve a capability for maximum production of "urgent" items during the initial phase of war, the following readiness measures shall be taken where advisable for facilities producing such items:

(1) Establishment of emergency production schedules.

(2) Development of a production capability which would function under widespread disruption and damage imposed by enemy attack, including, where necessary:

(i) Maintenance of an increased inventory of finished components and related production supplies at assembly plants, or arrangements for alternative supply lines where increased inventories are not feasible.

(ii) A capability to carry on urgent production without dependence on additional personnel, external sources of power, fuel, and water, or on long-distance communications; with spare replacements for highly vulnerable or unreliable parts of production equipment.

(iii) Protection of production facilities from enemy sabotage through adequate physical security measures.

(iv) Protection of personnel from widespread radiological fallout through provisions for decontamination and shelter.

§ 321.5 Retention of industrial facilities.

(a) Industrial properties, owned by the Department of Defense, the Department of Energy, and the Maritime Administration, shall be retained in the Industrial reserves (National Industrial Reserve, Departmental Industrial Reserve for the Department of Defense) of the department and agencies to the extent the capacity of said reserves is necessary for the production of defense or defense-supporting end items, materials or components in a mobilization period.

(b) Each idle plant in the reserves shall be reviewed annually by the heads of the respective agencies to determine if the capacity of the plant continues necessary for mobilization purposes.

(c) Upon the determination by the head of the agency that the capacity of a plant is excess to the mobilization requirements of the agency immediate steps will be taken to dispose of the plant through existing government channels for surplus disposal. The Federal Emergency Management Agency shall be informed by General Services Administration of each proposed surplus action prior to final determination.

§ 321.6 Participation of small business.

The agencies concerned with the order shall, in all of their programs for maintaining the mobilization base, be mindful of the national policy to protect the interests of small business, and to assure the maximum participation of small business in the mobilization base, including current procurement.

§ 321.7 [Reserved]

§ 321.8 Reports.

The Department of Defense, Department of Energy, and Maritime Administration shall furnish the Director of the Federal Emergency Management Agency with reports on items and facilities for programs under § 321.2 (a) and (b) of this part, and with such other periodic and special reports as he may require affecting the maintenance of the mobilization base.

PART 322—DEFENSE PRODUCTION: PRIORITIES AND ALLOCATIONS AUTHORITY (DMO-3)

Sec.
322.1 Purpose.
322.2 Policies.
322.3 Delegation of authority.

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; Executive Order 12148, 44 FR 43239.

SOURCE: 45 FR 44578, July 1, 1980, unless otherwise noted.

§ 322.1 Purpose.

This order:

(a) Establishes policy guidance in accordance with section 101 of Executive Order 10480 and sections 1-103 and 5-202 of Executive Order 12148;

(b) Delegates authority in accordance with section 201 of Executive Order 10480, as amended, and

(c) Delegates other authorities under the Defense Production Act of 1950, as amended.

§ 322.2 Policies.

(a) Authority of title I of the Defense Production Act of 1950, as amended, to control the distribution and use of materials and facilities, shall not be used except to require preference in the performance of contracts and orders and to allocate materials and facilities to accomplish the following:

(1) Direct military and atomic energy programs.

(2) Other programs and activities which are related to the military and atomic energy programs and which are certified by the Department of Defense or the Department of Energy and specifically authorized by the Federal Emergency Management Agency.

(3) Deliveries, production, and construction in industry required to fulfill direct military and atomic energy programs and the related programs and activities authorized under paragraph (a)(2) of this section.

(4) The general distribution in the civilian market of materials found to be scarce and critical pursuant to the provisions of section 101(b) of the Defense Production Act of 1950, as amended, and approved by the Director of the Federal Emergency Management Agency under section 201(b) of Executive Order 10480, as amended.

(5) Assistance in providing materials and facilities for the restoration of productive capacity damaged or destroyed by a major disaster as defined and determined under the provisions of Pub. L. 93-288 (42 U.S.C. 5121 *et seq.*).

(i) Whenever the facility to be restored has delivery orders identified by authorized program identification symbols under the defense materials system.

(ii) Whenever failure to restore the facility would result in failure to meet a defense delivery schedule.

(iii) Whenever failure to restore the facility would prevent the provision of a service necessary to meet a defense delivery schedule.

(iv) When and to the extent that assistance is necessary to restore mobilization base capacity for the production of defense items including materials and services covered by the Federal Emergency Management Agency expansion goals whether or not such goals remain open.

(b) The distribution of steel, copper, aluminum and nickel alloys for military and atomic energy and authorized related programs and activities shall assure:

(1) That supplies of these materials are available to those programs and activities on time and in proper quantity.

(2) That demands of these programs and activities shall be distributed among suppliers on a generally fair and equitable basis.

(3) That allotments are not made in excess of actual current requirements of these programs and activities.

These criteria shall also apply to the maximum practicable extent to the use of priorities for materials other than steel, copper, aluminum and nickel alloys in support of direct military and atomic energy programs and other authorized programs and activities.

(c) The Federal Emergency Management Agency shall review requirements and issue program determinations approving programs and making allotments of steel, copper, aluminum and nickel alloys to the Department of Defense and the Department of Energy for direct military and atomic energy programs and related programs and activities that have been authorized and assigned to these agencies for purposes of establishing them as programs eligible for priorities and allocations support, in accordance with the Department of Commerce regulations issued pursuant to title 1 of the Defense Production Act of 1950, as amended.

(d) All agencies now or hereafter designated by the Director of the Federal Emergency Management Agency to furnish supply and requirements data shall be responsible for the provision of such data and shall be entitled to be heard in connection with the determination of programs by the Director. The evaluation of supply and requirements data and the determination of programs shall be the function of the Associate Director, Plans and Preparedness of the Federal Emergency Management Agency with right of appeal to the Director of the Federal Emergency Management Agency by any designated agency.

(e) Exceptions to the foregoing basic policy may be made in the interests of the national defense by or with the authority of the Director of the Federal Emergency Management Agency.

§ 322.3 Delegation of authority.

(a) The functions of the Director of the Federal Emergency Management Agency under title 1 of the Defense Production Act of 1950, as amended, are hereby delegated to those offices and agencies named in section 201 of Executive Order 10480, as amended with respect to the areas of responsibilities designated, and subject to the limitations prescribed in that section.

(b) The functions conferred upon the Director of the Federal Emergency Management Agency under Title 1 of the Defense Production Act of 1950, as amended, with respect to priorities and allocations for civil transportation services are hereby delegated to the Secretary of Transportation, subject to the limitations prescribed in this regulation.

(c) The functions conferred upon the Director of the Federal Emergency Management Agency by sections 310(b) and 311(b) of Executive Order 10480, as amended, to certify the essentiality of loans to the Secretary of the Treasury and the Export-Import Bank of Washington are hereby delegated to the Administrator of General Services to the extent that such loans are a part of and in accordance with the terms of programs certified by the Director of the Federal Emergency Management Agency pursuant to section 312 of Executive Order 10480.

(d) The functions conferred upon the Director of the Federal Emergency Management Agency by section 304 of Executive Order 10480, as amended, relative to the encouragement of exploration, development and mining of strategic and critical metals and minerals are hereby delegated to the Secretary of the Interior.

(e) The functions delegated by this order may be redelegated with or without authority for further redelegation, and redelegations on the date hereof shall continue in effect until rescinded or modified by appropriate authority.

(f) Officers and agencies performing the functions delegated by this order or redelegated by, or by authority of, the delegates hereunder shall perform such functions subject to the direction and control of the Director of the Federal Emergency Management Agency as provided by section 101 of Executive Order 10480, as amended. Such officers and agencies shall furnish such reports on the use of the authority as the Director may require.

[45 FR 44578, July 1, 1980, as amended at 45 FR 53479, Aug. 12, 1980]

PART 323—GUIDANCE ON PRIORITY USE OF RESOURCES IN IMMEDIATE POST ATTACK PERIOD (DMO-4)

Sec.
323.1 Purpose.
323.2 General policy.
323.3 Responsibilities.
323.4 Priority activities in immediate postattack period.
323.5 Assignment of resources.
Appendix 1—List of Essential Survival Items

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329, Executive Order 12148 of July 20, 1979, 44 FR 43239.

Source: 45 FR 44579, July 1, 1980, unless otherwise noted.

§ 323.1 Purpose.

This part:

(a) States the policy of the Federal Government on use of resources in the period immediately following a nuclear attack on the United States;

(b) Provides general guidance for Federal, State, and local government officials on activities to be accorded priority in the use of postattack resources; and

(c) Lists those items essential to national survival in the immediate postattack period.

§ 323.2 General policy.

(a) In an immediate postattack period all decisions regarding the use of resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and retaliatory operations, and economic activities essential to continued survival and recovery.

(b) This guidance is designed to achieve a degree of national equity in the use of resources and to assign and conserve resources effectively in the immediate postattack period. Until more specific instructions are available, these are the general guidelines within which managerial judgment and common sense must be used to achieve national objectives under widely differing emergency conditions.

§ 323.3 Responsibilities.

(a) As stated in The National Plan for Emergency Preparedness, the direction of resources mobilization is a Federal responsibility. However, in the period immediately following an attack, certain geographical areas may be temporarily isolated, and State and local governments will assume responsibility for the use of resources remaining in such areas until effective Federal authority can be restored. State and local governments will not assume responsibility for resources under the jurisdiction of a Federal agency where the Federal agency is able to function.

(b) As soon as possible after an attack and until specific national direction and guidance on the use of resources is provided, Federal, State, and local officials will determine what resources are available, to what needs they can be applied, how they are to be used, and the extent to which resources are deficient or in excess of survival needs. They will base determinations as to the relative urgency for use of resources primarily upon the importance of specific needs of defense, survival, and recovery.

§ 323.4 Priority activities in immediate postattack period.

The following activities are to be accorded priority over all other claims for resources. There is no significance in the order of the listing—all are important. The order in which and the extent to which they are supported locally may vary with local conditions and circumstances. If local conditions necessitate the establishment of an order of priority among these activities, that order shall be based on determinations of relative urgency among the activities listed, the availability of resources for achieving the actions required, and the feasibility and timeliness of the activities in making the most rapid and effective contribution to national survival.

(a) The immediate defense and retaliatory combat operations of the Armed Forces of the United States and its Allies: This includes support of military personnel and the production and distribution of military and atomic weapons, materials and equipment required to carry out these immediate defense and retaliatory combat operations.

(b) Maintenance or reestablishment of Government authority and control to restore and preserve order and to assure direction of emergency operations essential for the safety and protection of the people. This includes:

(1) Police protection and movement direction;

(2) Fire defense, rescue and debris clearance;

(3) Warnings;

(4) Emergency information and instructions;

(5) Radiological detection, monitoring and decontamination.

(c) Production and distribution of survival items and provision of services essential to continued survival and rapid recovery. (For list of survival items, see Appendix 1 to this part.) These include:

(1) Expedient shelter;

(2) Food, including necessary processing and storage;

(3) Feeding, clothing, lodging, and other welfare services;

(4) Emergency housing and community services;

(5) Emergency health services, including medical care, public health and sanitation;

(6) Water, fuel, and power supply;

(7) Emergency repair and restoration of damaged vital facilities.

(d) Essential communications and transportation services needed to carry out the above activities.

(e) Provision of supplies, equipment, and repair parts to produce and distribute goods needed for the above activities.

§ 323.5 Assignment of resources.

Resources required for essential uses, including manpower, will be assigned to meet the emergency requirements of the priority activities indicated above. The principal objectives are to use available resources to serve essential needs promptly and effectively, and to:

(a) Protect and to prevent waste or dissipation of resources prior to their assignment to priority activities;

(b) Support production of essential goods. Other production will be permitted to continue only from inventories on hand and when there is no emergency requirement for the resources vital to this production.

(c) Support construction for emergency repair and restoration, construction of facilities needed for survival, or the conversion of facilities to survival use, where this can be accomplished quickly. Other construction already under way should be stopped, and no new construction started unless it can be used immediately for essential purposes upon completion.

APPENDIX 1 TO PART 323—LIST OF ESSENTIAL SURVIVAL ITEMS

This document contains a list of items considered essential to sustain life at a productive level to assure national survival in an emergency. The list identifies items to which major attention should be given in all phases of preattack planning to insure the availability of basic essentials for a productive economy in the event of a nuclear attack. Supply-requirements studies and assessments for these items will be made to disclose critical deficiencies or other problems that can be anticipated. Revisions will be made as necessary to keep the items as up-to-date as possible.

The items are arranged by seven major groups:

(1) Health Supplies and Equipment,
(2) Food,
(3) Body Protection and Household Operations,
(4) Electric Power and Fuels,
(5) Sanitation and Water Supply,
(6) Emergency Housing and Construction Materials and Equipment, and
(7) General Use Items.

Survival items are defined as "those items without which large segments of the population would die or have their health so seriously impaired as to render them both burdensome and non-productive." The items have been classified into Group A or Group B, with Group A representing end products consumed or used directly by the population, and Group B consisting of those items essential to the effective production and utilization of the Group A items, which are consumed or used directly by the people.

There are no Group B items in the categories of Health Supplies and Equipment, Body Production and Household Operations, and Emergency Housing and Construction Materials and Equipment. All of these items are considered to be consumed directly and any attempt to separate them in to A and B groupings would be too arbitrary to be meaningful.

It is important to keep in mind the fact that while the items listed are the basic essentials necessary for maintaining a viable economy during the first six months following an attack, not all of them would create problems that would require government action preattack to insure adequate supplies. The aforementioned supply-requirements studies will be undertaken to identify the problem areas. In developing supply data, all available production capacity, existing inventories, and possible substitutions will be considered. For example, in analyzing clothing items, all available supplies would be considered from sport to dress shirts, from overalls to dress suits. However, new production would be limited to the simplest form of the basic item which can be produced. The final determination as to which of the items are most critical and which may require preattack actions by the Government, as well as the type of actions which must be taken, can be made only after a comprehensive supply-requirements analysis is completed.

LIST OF ESSENTIAL SURVIVAL ITEMS

I. *Health Supplies and Equipment:*

GROUP A

1. *Pharmaceuticals:*
Alcohol.
Analgesics, non-narcotic.
Antibiotics and antibacterials.
Antidiabetic agents, oral.
Antihistamines.
Antimalarials.
Atropine.
Blood derivatives.
Carbon dioxide absorbent.
Cardiovascular depressants.
Cardiovascular stimulants.
Corticosteriods.
Diuretics.
General anesthetics.
Hypnotics.
Insulin.
Intravenous solutions for replacement therapy.
Local anesthetics.
Lubricant, surgical.
Morphine and substitutes.
Oral electrolytes.
Oxygen.

Surgical antiseptics.
Sulfa drugs.
Synthetic plasma volume expanders.
Vitamin preparations, pediatric.
Water for injection.

2. *Blood Collecting and Dispensing Supplies:*

Blood collecting and dispensing containers.
Blood donor sets.
Blood grouping and typing sera.
Blood recipient sets.
Blood shipping containers.

3. *Biologicals:*

Diphtheria toxoid.
Diphtheria antitoxin.
Diphtheria and tetanus toxoids and pertussis vaccine.
Gas gangrene antitoxin.
Poliomyelitis vaccine, oral.
Rabies vaccine.
Smallpox vaccine.
Tetanus antitoxin.
Tetanus toxoid, absorbed.
Typhoid vaccine.
Typhus vaccine, epidemic.
Yellow fever vaccine.

4. *Surgical Textiles:*

Adhesive plaster.
Bandage, gauze.
Bandage, muslin.
Bandage, plaster of paris.
Cotton, USP.
Surgical pads.
Stockinette, surgical.
Wadding, cotton sheet.

5. *Emergency Surgical Instruments and Supplies:*

Airway, pharyngeal.
Anesthesia apparatus.
Basin, wash, solution.
Blade, surgical knife.
Brush, scrub, surgical.
Catheter, urethral.
Containers for sterilization.
Chisel, bone.
Drain, Penrose.
Dusting powder.
Forceps, dressing.
Forceps, hemostatic.
Forceps, obstetrical.
Forceps, tissue.
Gloves, surgeon's.
Handles, surgical knife.
Holder, suture needle.
Inhaler, anesthesia, Yankauer (ether mask).
Intravenous injection sets.
Knife, cast cutting.
Lamps, for diagnostic instruments.
Lamps, for surgical lights.
Laryngoscope.
Light, surgical, portable.
Litter.
Mallet, bone surgery.
Needles, hypodermic, reusable.
Needles, suture, eyed.
Otoscope and ophthalmoscope set.
Probe, general operating.
Razor and blades (for surgical preparation).
Retractor, rib.
Retractor set, general operating.
Rongeur, bone.
Saw, amputating.
Saw, bone cutting, wire (Gigli).
Scissors, bandage.
Scissors, general surgical.
Sigmoidoscope.
Speculum, vaginal.
Sphygmomanometer.
Splint, leg, Thomas.
Splint, wire, ladder.
Sterilizer, pressure, portable.
Stethoscope.
Sutures, absorbable.
Sutures, absorbable, with attached needle.
Sutures, nonabsorbable.
Sutures, nonabsorbable, with attached needle.
Syringes, Luer, reusable (hypodermic syringes).
Thermometers, clinical.
Tracheotomy tube.
Tube, nasogastric.
Tubing, rubber or plastic, and connectors.
Vascular prostheses.
Webbing, textile, with buckle.

6. *Laboratory Equipment and Supplies:*

Bacteriological culture media and apparatus.
Balance, laboratory with weights.
Blood and urine analysis instruments, equipment and supplies.
Chemical reagents, stains and apparatus.
Glassware cleaning equipment.
Laboratory glassware.
Microscope and slides.
Water purification apparatus.

GROUP B

None.

II *Food:*

GROUP A

1. *Milk Group.* Milk in all forms, milk products. Important for calcium, riboflavin, protein, and other nutrients.

2. *Meat and Meat Alternate Group.* Meat, poultry, fish, eggs; also dry beans, peas, nuts. Important for protein, iron, and B-vitamins.

3. *Vegetable-Fruit Group.* Including 1. Dark Green and yellow vegetables. Important for Vitamin A. 2. Citrus fruit or other fruit or vegetables. Important for Vitamin C. 3. Other fruits and vegetables, including potatoes.

4. *Grain Products.* Especially enriched, restored, cereal and cereal products, and bread, flours, and meals. Important for energy, protein, iron, and B-vitamins.

5. *Fats and Oils.* Including butter, margarine, lard, and other shortening oils. Important for palatability and food energy; some for Vitamin A and essential fatty acids.

6. *Sugars and Syrups.* Important for palatability and food energy.

7. *Food Adjuncts.* Certain food adjuncts should be provided to make effective use of available foods. These include antioxidants and other food preservatives, yeast, baking powder, salt, soda, seasonings and other condiments. In addition, coffee, tea, and cocoa are important for morale support.

GROUP B

Food containers.
Nitrogenous fertilizers.
Seed and livestock feed.
Salt for livestock.
Veterinary Medical Items:
Anthrax vaccine.
Black leg vaccine.
Hog cholera vaccine.
Newcastle vaccine.

III. *Body Protection and Household Operations:*

GROUP A

1. *Clothing:*
Gloves and mittens.
Headwear.
Hosiery.
Outerwear.
Shoes and other footwear.
Underwear.
Waterproof outer garments.
2. *Personal Hygiene Items:*
Diapers, all types.
Disposable tissues.
First aid items (included on Health Supplies and Equipment List).
Nipples.
Nursing bottles, all types.
Pins.
Sanitary napkins.
Soaps, detergents, and disinfectants.
Toilet tissue.
3. *Household Equipment:*
Bedding.
Canned heat.
Cots.
Hand sewing equipment.
Heating and cooking stoves.
Incandescent hand portable lighting equipment (including flashlights, lamps, batteries).
Kitchen, cooking, and eating utensils.
Lamps (incandescent medium base) and lamp holders.
Matches.
Nonelectric lighting equipment.
Sleeping bags.

GROUP B

None.

IV. *Electric Power and Fuels:*

1. *Electric Power.*

GROUP A

Electricity.

GROUP B

Conductors (copper and/or aluminum), including bare cable for high voltage lines and insulated wire or cable for lower voltage distribution circuits.
Switches and circuit breakers.
Insulators.
Pole line hardware.
Poles and crossarms.
Transformers (distribution, transmission, and mobile).
Tools for live-circuit operations, including rubber protective equipment, and linemen's tools.
Utility repair trucks, fully equipped.
Prime mover generator sets up to 501 kilowatts and 2400 volts, including portable and mobile sets up to 150 kilowatts and 110/220/440 volts, 3-phase, 60-cycle complete with fuel tank and switchgear in self-contained units.

2. *Petroleum Products.*

GROUP A

Gasoline.
Kerosene.
Distillate fuel oil.
Residual fuel oil.
Liquefied petroleum oil.
Lubricating oil.
Grease.

GROUP B

Storage tanks.
Pumps for loading and unloading.
Pressure containers and fittings for liquefied petroleum gas.

3. *Gas.*

GROUP A

Natural gas.
Manufactured gas.

GROUP B

Various sizes of pipe (mostly steel).
Various sizes of valves, fittings, and pressure regulators.
Specialized repair trucks and equipment.

4. *Solid Fuels.*

GROUP A

Coal and coke.

GROUP B

Conveyor belting.
Insulated trail cables.
Trolley feeder wire.
Roof bolts.

V. *Sanitation and Water Supply:*

GROUP A

1. *Water.*
2. *Water Supply Materials:*
a. *Coagulation:*
Ferric chloride.
Ferrous sulfate.
Ferric sulfate.
Chlorinated copperas.
Filter alum.
Hydrated lime.
Pulverized limestone.
Soda ash.
b. *Disinfection Chemicals:*
High-test hypochlorites (70 percent) in drums, cans, ampules.
Iodine tablets.
Liquid chlorine, including containers.
Chlorine compounds (not gas).
c. *Miscellaneous Materials:*
Diatomaceous earth.
Activated carbon.
3. *Chemical Biological, and Radiological (CBR) Detection, Protection, and Decontamination Items:*
Calibrators.
Chemical agent detection kits, air, food, and water.
Dosimeters and chargers.
Protective masks, clothing, helmets.
Survey meters (Alpha, Beta, Gamma).
Warning signs—biological, chemical, and radiological contamination.
4. *Insect and Rodent Control Items:*
a. *Insecticides:*
DDT, water dispersible powder (75 percent).
Lindane powder, dusting (1 percent).
Malathion, liquid, emulsifiable concentrate (57 percent).
Deet (diethyltoluamide) 75 percent in denatured alcohol.
Pyrethrum.
b. *Rodenticides:*
Anticoagulant type, ready-mixed bait.
"1080" (sodium monofluoroacetate) (for controlled use only).
5. *General Sanitation:*
Lye.

GROUP B

1. *General Supplies and Equipment:*
Chemical feeders.
Mobile and portable pressure filters.
Chlorinators (gas and hypochlorites).
Pumps and appurtenances, Hand—Electric—Gasoline—Diesel.
Well-drilling equipment, including well casing, drive pipe and drive points.
2. *Storage and Transport Equipment:*
Lyster bags.
Storage tanks, collapsible and portable.
Storage tanks, rigid, transportable.
Storage tanks, wood stave, knock-down.
3. *Laboratory Equipment and Supplies:*
Membrane filter kits with filters and media.
Chlorine and pH determination equipment.
4. *Sanitation Equipment:*
Hand sprayer, continuous type.
Hand sprayer, compression type.
Hand duster, plunger type.
Spraying equipment for use with helicopter, fixed-wing light aircraft, high-speed fixed-wing attack aircraft, and cargo-type aircraft.

VI. *Emergency Housing and Construction Materials and Equipment.*

GROUP A

Asphalt and tar roofing and siding products.
Builders hardware—hinges, locks, handles, etc.
Building board, including insulating board, laminated fiberboard, hardpressed fiberboard, gypsum board, and asbestos cement (flat sheets and wallboard).
Building papers.
Plastic patching, couplings, clamps, etc. for emergency repairs.
Plumbing fixtures and fittings.
Prefabricated emergency housing.
Rough hardware—nails, bolts, screws, etc.
Sewer pipe and fittings.
Tents and tarpaulins; canvas, plastics, and other similar materials.
Lumber and allied products; Lumber, principally 1-inch and 2-inch, minor quantities of small and large timbers; siding and flooring; plywood; millwork, doors, and windows.
Masonry products—brick, cement, lime, concrete block, hollow tile, etc.
Translucent window coverings.
Water pipe and hose, plus fittings—all types including fire hose.

GROUP B

None.

VII. *General Use Items.*

GROUP A

None.

GROUP B

Batteries, wet and dry cell.
Bulldozers.
Fire fighting equipment.
Light equipment and hand tools (including electric powered) for carpentry, masonry, plumbing, and excavation.
Pipe installation materials and equipment.
Refrigerators, mechanical.
Rigging tools—cables, ropes, tackles, hoists, etc.
Tank railroad cars.
Tank Trucks and trailers.
Tires.
Trenching equipment.

Truck tractors and trailers, including low bed.
Trucks up to five tons (25 percent equipped with power takeoff).
Welding equipment and supplies (electric and acetylene).

PART 324—NATIONAL SECURITY POLICY GOVERNING SCIENTIFIC AND ENGINEERING MANPOWER (DMO–5)

Sec.
324.1 Purpose.
324.2 Background.
324.3 Policy.
324.4 Action.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 C.F.R. 1978 Comp. p. 329, Executive Order 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44582, July 1, 1980, unless otherwise noted.

§ 324.1 Purpose.

This part provides current policy on the training and utilization of scientific and engineering manpower as it affects the national security.

§ 324.2 Background.

(a) The essential role of scientific and engineering manpower in any period of national emergency is well recognized. While the quantity and quality of scientific and engineering manpower are materially influenced by Government action, the development and use of such manpower are greatly dependent upon policies and actions of the private sector.

(b) Since the issuance of Defense Manpower Policy 8, many steps have been taken by the Government and the private sector to assure the adequacy of scientific and engineering manpower for total national security. This statement of current Government policy is intended to continue the constructive policies and actions already in being and to assure the adequacy of this important national resource during a major emergency.

§ 324.3 Policy.

It is the policy of the Federal Government to project the Nation's scientific and engineering manpower requirements sufficiently into the future to permit long-range planning; to relate those requirements to other resource requirements, including requirements for other manpower skills; to relate peacetime and emergency requirements; and to cooperate with educators, industry, professional societies, and employee associations to:

(a) Support training and education programs which enhance our national security through the development of defense related skills.

(b) Stimulate individuals with scientific and technical aptitudes to attain the highest level of formal education in science and technology for which they are capable.

(c) Stress basic principles and fundamentals of science and technology in educational curricula.

(d) Offer significant on-the-job training which will broaden the experience and capabilities of individual scientists and engineers.

(e) Provide realistic retraining opportunities which will assist in updating the knowledge and skills of scientists and engineers.

(f) Broaden the selection base in order to assure entry of all qualified individuals, including women and members of minority groups, into scientific and technical positions.

(g) Encourage continued employment of senior scientists and engineers who are yet capable of efficient performance, even though the retention of such personnel may be only on a part-time basis.

(h) For maximum security explore and, where appropriate, adopt the principle of decentralized scientific and technical operations.

§ 324.5 Action.

Consistent with the policies contained herein, each department and agency of the Federal Government should (a) review its current manpower policies and update its policies and programs for scientific and engineering manpower to assure their maximum contribution to national security and emergency preparedness, (b) base its policies and actions on projected peacetime and emergency requirements, and (c) encourage and support private sector efforts to assure the fulfillment of future requirements for this critical manpower resource.

PART 325—EMERGENCY HEALTH AND MEDICAL OCCUPATIONS

Sec.
325.1 Purpose.
325.2 Scope and applicability.
325.3 Policy.

AUTHORITY: Defense Production Act of 1950, as amended; 50 USC App. 2061, *et seq.;* E.O. 11490 of October 28, 1969, (34 FR 17567); E.O. 12148 effective July 20, 1979 (44 FR 43239).

SOURCE: 45 FR 8601, Feb. 8, 1980. Redesignated at 45 FR 8601, July 1, 1980, unless otherwise noted.

§ 325.1 Purpose.

The Director, Federal Emergency Management Agency, after agreement with the Secretary of Labor and the Secretary of Health, Education, and Welfare, issues this List of Emergency Health and Medical Occupations in support of Part 11, Executive Order 11490, as amended. This List provides guidance to all officials concerned with planning for the emergency training and emergency assignment of health and medical personnel engaged in the listed occupations.

§ 325.2 Scope and applicability.

The list of Emergency Health and Medical Occupations identifies those occupations which would be needed to provide public health and medical services during and immediately after an emergency in which survival of the population is the primary consideration.

§ 325.3 Policy.

(a) *Training for emergency.* Sections 1101; 1103(1); 1104(2); and 1325(4) of Executive Order 11490 specify emergency training responsibilities of the Secretary of Health, Education, and Welfare. Depending on the availability of resources, the Secretary of Health, Education, and Welfare, in cooperation with other Federal departments/agencies, State and local governments, and appropriate private sector organizations, shall:

(1) Define the emergency roles which would be performed by those filling the occupations included on the List of Emergency Health and Medical Occupations; (2) develop and implement appropriate emergency training programs designed to prepare individuals in these occupations to perform effectively their specialized roles in a national emergency as distinguished from their peacetime functions; and (3) set quantitative and qualitative training objectives for each occupational category and develop arrangements for payment for the training.

(b) *Allocation of the health and medical workforce in emergencies.* During a declared national emergency, in which survival of the population is the preeminent consideration, the provision of health and medical services would be a priority emergency response and recovery function. To ensure that this priority need is met, officials responsible for the allocation of the workforce in emergency will use the List of Emergency Health and Medical Occupations as an aid in the mobilization of available health and medical personnel and the staffing of emergency health and medical services. Emergency situations may dictate the need to redistribute, on a temporary basis, health and medical personnel in order to provide for equitable and needed coverage of the emergency caseload. Although Federal, State, and local health officials are expected to have the requisite authority to take such actions in a declared national emergency, it is probable that the traditional role of volunteerism in the health and medical field will prevail and minimize the need for involuntary controls. Jurisdiction over health and medical personnel in actual emergencies would remain with their employers and the integrity of institutional services will be preserved wherever possible, except as noted above.

(c) *Use of health and medical personnel in other priority emergency activities.* While health and medical services will be an immediate priority need in most declared national emergencies, as the situation unfolds, different priority needs will evolve, placing unusual demand on scarce workforce resources. As emergency health hazards and medical care loads are brought under control, it may be possible to release certain health and medical personnel who fill positions in the occupational categories listed on the List of Emergency Health and Medical Occupations for augmentation of other essential work groups on a temporary basis. Where possible, such reassignments should be accomplished on a consultative, voluntary basis.

(d) *Ancillary and support personnel.* Vital to the effective performance of the emergency health and medical team are individuals in direct support occupations such as hospital, sanitation, and laboratory helpers, as well as engineering, clerical, food service, and custodial personnel. Personnel in these ancillary and support categories will remain on their jobs during and after a declared national emergency until health hazards and medical care loads are brought under control. Reassignment of these personnel will follow the policy cited in paragraph (c) of this section.

(e) *List of emergency health manpower occupations.**

Occupational title	Code number[1]
Administrator, Hospital	187.117
Admitting Officer (Medical Service)	205.137
Ambulance Attendant (Medical Service)	355.374
Ambulance Driver (Medical Service)	913.683
Audiologist	076.101
Audiometrist	078.362
Bacteriologist	041.061
Bacteriologist, Dairy	041.061
Bacteriologist, Fishery	041.061
Bacteriologist, Food	041.061
Bacteriologist, Medical	041.061
Bacteriologist, Pharmaceutical	041.061
Biochemist	041.061
Birth Attendant	354.377
Chemist, Clinical	041.061
Chemist, Pharmaceutical	041.061
Dentist	072
Dental Assistant (Medical Service)	079.371
Dental Hygienist	078.361
Dietitian, Clinical (Prof. & Kindred)	077.127
Emergency Medical Services Coordinator	079.117
Entomologist (Prof. & Kindred)	041.061
Food and Drug Inspector (Government Services)	168.267
Health Officer, Field	168.167
Health Physicist	079.021
Helminthologist	041.061
Histopathologist	041.061
Hygienist, Industrial	079.161
Industrial Health Engineer	012.167
Laboratory Assistant, Blood and Plasma	078.687
Medical Apparatus Model Maker	712.261
Medical Assistant	079.367
Medical Laboratory Assistant	078.381
Medical Record Administrator	079.169
Nurse Aide	355.674
Nurse, Practical	354.374
Nurse, Licensed Practical	079.374
Nurse, Registered	075
Optician, Dispensing	713.361
Optician	716.280
Optometrist	079.101
Orderly (Medical Service)	355.674
Orthopedic Assistant	712.661
Orthoptist (Medical Service)	079.371
Orthotist	078.261
Osteopathic Physician	071.101
Parasitologist	041.061
Pathologist	070.061
Pharmacist	074
Pharmacologist	041.061
Physicians and Surgeons	070
Physician Assistant	079.364
Podiatrist	079.101
Prosthetist	078.261
Protozoologist	041.061
Psychiatric Aide	355.377
Pshchologist, Clinical	045.107
Public Health Educator (Prof. & Kindred)	079.117
Public Health Microbiologist	041.261
Radiation Monitor	199.167
Sanitarian	079.117
Sanitary Engineer	005.061
Social Worker, Medical	195.107
Social Worker, Psychiatric	195.107
Superintendent, Hospital	187.117
Supervisor, Dental Laboratory	712.131
Technicians:	
Audiometric Technican	078.362
Biomedical Equipment Technician (inst. and app.; medical service)	719.261
Biomedical Equipment Technician (Prof. & Kindred)	019.261
Blood-Bank Technician	078.381
Cytotechnician	078.381
Dental-Laboratory Technician	712.381
Dental Technician	712.381
Dialysis Technician	078.362
Electrocardiograph Technician	078.362
Electroencephalographic Technician	078.362
Emergency Medical Technician	079.374
Hematology Technician	078.381
Laboratory Technician, Veterinary	073.361
Medical Technician	078.381
Medical Laboratory Technician	078.381
Orthodontic Technician	712.381
Orthotics-Prosthetics Technician	712.381
Sereology Technician	078.381
Surgical Technician	079.374
Tissue Technician	078.381
X-ray Technician	199.361
Technologists:	
Biochemistry Technologist	078.261
Blood-Bank Technologist	078.361
Cytotechnologist	078.281
Hermatology Technologist	078.361
Histopathology Technologist	078.361
Medical Technologist	078.361

---

*Includes students, trainees, and interns whose training or education leading to any of the indicated skills is sufficiently advanced to qualify them to contribute to the technical tasks of providing health services.

Occupational title	Code number[1]
Microbiology Technologist	078.261
Nuclear Medical Technologist	078.361
Radiologic Technologist	078.362
Serology Technologist	078.361
Tissue Technologist	078.361
X-ray Technologist	078.362
Therapists:	
Inhalation Therapist	079.361
Occupational Therapist	076.121
Orientation Therapist for Blind	076.221
Physical Therapist	076.121
Respiratory Therapist	079.361
Veterinarians[2]	073
Virologist	041.061

[1] Dictionary of Occupational Titles/Department of Labor/Fourth Edition.

[2] Though current planning provides that many veterinarians be utilized in casualty care and preventive medicine activities immediately after an emergency, veterinarians will continue to be needed to perform services of a strictly veterinary nature after most of the human casualties have been cared for temporarily. Such veterinary activities will include protection of food, animals against diseases and the effects of atomic, biological, and chemical warefare; meat and poultry inspection and supplementing food inspection forces for certain food processing plants, and food storage facilities.

PART 326—POLICY GUIDANCE FOR A NATIONAL EMERGENCY BLOOD PROGRAM (DMO-7)

Sec.

326.1 Purpose.
326.2 Background.
326.3 Objectives.
326.4 Policy.
326.5 Responsibilities.
326.6 Interagency research relationships.
326.7 Reports.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329, Executive Order 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44582, July 1, 1980, unless otherwise noted.

§ 326.1 Purpose.

This order prescribes the objectives, policies, and responsibilities of the National Emergency Blood Program.

§ 326.2 Background.

Provision of adequate blood and related items and activities to meet basic military, civil defense and civilian needs in an emergency is of recognized national importance. Certain government agencies and civilian blood banking systems have developed programs designed to contribute to this end. Coordination of these programs is essential to achieve maximum effectiveness and to avoid duplication of efforts and conflict of activities.

§ 326.3 Objectives.

The National Emergency Blood Program is established to develop, prior to a national emergency, the capability and readiness to make optimum use of available resources to meet the Nation's requirements for blood and related products in any such emergency. Actions directed toward this objective include planning and organization for emergency operations, standardization, and stockpiling of supplies and equipment, training of personnel in blood program techniques, and development of donor appeal measures.

§ 326.4 Policy.

(a) *Coordination.* No Federal agency shall duplicate the efforts of any other agency participating in this program except in situations where it is clearly recognized that the task in question cannot be otherwise adequately performed. Further, any such duplicating effort shall not be undertaken without prior agreement among the Federal agencies involved and the Federal Emergency Management Agency. All other agencies participating in the program are urged to coordinate their efforts with all other participants so as to avoid unnecessary duplication.

(b) *Blood collection activities.* (1) The blood collection activities of Federal agencies shall be administered so as to make maximum, efficient use of available sources while assuring minimum impact on provision of normal blood supplies for the civilian community.

(2) The collection facilities of the Department of Defense shall be limited to Armed Services installations and blood shall be drawn only from military personnel or from civilian personnel on military installations.

(c) *Reserves.* (1) Reserves of blood products, artificial plasma volume expanders and related items shall be established and maintained by the Department of Defense and by the Department of Health and Human Services.

(2) Blood derivative reserves for the National Emergency Blood Program shall be established by contracting with the civilian suppliers for the collection of blood for this purpose, except that the Department of Defense may utilize blood salvaged from its blood collection program for the purpose of adding to the Department of Defense blood derivative reserve.

(3) Blood or blood derivatives going into the reserves shall be allocated according to military and nonmilitary defense requirements to the Department of Defense and the Department of Health and Human Services by the Director, Federal Emergency Management Agency.

(4) In the event of a national emergency, the total reserves of blood products, artificial plasma volume expanders and related items shall be subject to immediate reallocation by Executive order.

(d) *Emergency allocation of blood and blood derivatives.* The Director, Federal Emergency Management Agency, may, in an emergency, allocate blood collected by organizations actively participating in this Program. With modifications dependent on the magnitude and type of emergency, the following priorities will be applied:

(1) First priority shall be given to the allocation of blood to the Armed Services for whole blood transfusion purposes.

(2) Second priority shall be given to the allocation of whole blood and blood derivatives for civilian needs.

(e) *Recruitment of volunteer blood donors.* When directed by the Federal Emergency Management Agency, the total donor recruitment program shall be geared to soliciting donors for the Blood Program as a whole rather than for specific parts of the whole. The various agencies involved in this program shall unite in a coordinated effort to inform the people clearly of the urgent need for blood. The Federal Emergency Management Agency shall designate the agency to administer this effort.

§ 326.5 Responsibilities.

(a) The Federal Emergency Management Agency will exercise authoritative coordination of the program. It will develop and promulgate overall policy guidance and will adjudicate conflicts between participating Federal agencies.

(b) The Department of Defense is responsible for administering the military aspects of this program.

(c) The Department of Health and Human Services is responsible for the nonmilitary aspects of this program as part of its assignment of responsibility for planning the mobilization of the nation's civilian health resources.

(d) The Secretary of Defense shall maintain an interagency committee to coordinate Federal agency funding and programing aspects for research and development projects relating to the National Emergency Blood Program so as to best support that program. However, this mission should not be construed as control or direction of the research of any agency represented on this committee.

(e) The National Research Council shall:

(1) Formulate, evaluate, and recommend programs and projects relating primarily to scientific aspects of the National Emergency Blood Program.

(2) Recommend actions which may be taken by the various agencies involved in the operation of the National Emergency Blood Program based on relevant research determinations.

§ 326.6 Interagency research relationships.

(a) Funds shall be provided for the work of the National Research Council in connection with the National Emergency Blood Program by participating agencies in accordance with established practices.

(b) Interested Federal agencies, such as the Federal Emergency Management Agency, Department of Defense, Public Health Service, and the Food and Drug Administration, shall seek the advice of the National Research Council on problems relating primarily to the scientific aspects of Research and Development for the National Emergency Blood Program.

(c) The National Research Council, the Department of Defense interagency committee, and the Federal Emergency Management Agency shall keep each other informed of program developments.

§ 326.7 Reporting.

(a) Reports of the activities of the Council and the committee shall be submitted when and as requested by the Federal Emergency Management Agency.

(b) As and when directed by the Federal Emergency Management Agency, the Department of Health and Human Services, and the Department of Defense, shall provide the Federal Emergency Management Agency with reports covering (1) the respective requirements and reserves of blood program items; and (2) related activities.

PART 327—POLICY ON USE OF GOVERNMENT-OWNED INDUSTRIAL PLANT EQUIPMENT BY PRIVATE INDUSTRY (DMO-10A)

Sec.
327.1 Purpose.
327.2 Scope and applicability.
327.3 Policy.
327.4 Disputes.
327.5 Reports.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 C.F.R. 1978 Comp. p. 329; Executive Order 12148 of July 20, 1979, 44 F.R. 43239.

SOURCE: 45 FR 44583, July 1, 1980, unless otherwise noted.

§ 327.1 Purpose.

This part establishes policy on the use by private industry of Government-owned industrial plant equipment. This policy is necessary to maintain a highly effective and immediately available reserve of such equipment for the emergency preparedness programs of the U.S. Government.

§ 327.2 Scope and applicability.

(a) This part applies to all Federal departments and agencies having, for purposes of mobilization readiness, Government-owned industrial plant equipment under their jurisdiction or control and having emergency preparedness functions assigned by Executive orders concerning use of that equipment.

(b) As used herein, "industrial plant equipment" means those items of equipment, each with an acquisition cost of $1,000 or more, that fall within specified classes of equipment listed in DOD regulations. Classes of equipment may from time to time be added to or deleted from this list.

§ 327.3 Policy.

(a) *General.*—(1) Primary reliance for defense production shall be placed upon private industry.

(2) When it is determined by an agency that, because of the lack of specific industrial plant equipment, private industry of the United States cannot be relied upon for needed Government production, that agency may provide to private industry such Government-owned industrial plant equipment as is deemed necessary to ensure required production capability. Requirements for such equipment should be reviewed at least annually to ascertain the continuing need, particularly with a view toward private industry furnishing the equipment for long term requirements.

(3) When it is necessary for Federal agencies to supply Government-owned industrial plant equipment to private industry, these agencies will maintain uniformity and fairness in the arrangements for the use of this equipment by following regulations for the use of such equipment as developed and published by the Secretary of Defense pursuant to section 809 of Pub. L. 93-155. The regulations to be developed by the Secretary of Defense shall be in consonance with this order. These regulations will attempt to

ensure that no Government contractor is afforded an advantage over his competitors and that Government-owned industrial plant equipment is maintained properly and kept immediately available for the emergency preparedness needs of the United States.

(b) *Interagency use of idle equipment.* In any instances in which a Government contractor cannot meet Government production schedules because necessary industrial plant equipment is not available from private industry or from the contracting Federal department or agency, idle industrial plant equipment under the control of other Federal agencies may be made available for this purpose through existing authorities on a transfer, loan, or replacement basis by interagency agreement.

(c) *Availability of equipment for emergency use.* Government-owned industrial plant equipment may be provided by controlling agencies for emergency use by essential Government contractors whose facilities have been damaged or destroyed.

(d) *Uniform rental rates.* All new agreements entered into by any agency of the Federal Government under which private business establishments are provided with Government-owned industrial plant equipment shall be subject to rental rates established by the Secretary of Defense pursuant to section 809 of Pub. L. 93-155. The rental rates shall ensure a fair and equitable return to the U.S. Government and be generally competitive with commercial rates for like equipment.

(e) *Use of Government-owned industrial plant equipment for commercial (non-Government) purposes.* Subject to adequate controls being established under DOD regulations pursuant to Pub. L. 93-155, and statutory authority for leasing, Government-owned industrial plant equipment may be authorized for commercial use by contractors performing contracts or subcontracts for the Government agency if it is necessary to keep the equipment in a high state of operational readiness through regular usage to support the emergency preparedness programs of the U.S. Government.

§ 327.4 Disputes.

In the event of an interagency dispute about the regulations developed by the Department of Defense in accordance with this order, the Director, Federal Emergency Management Agency, shall adjudicate.

§ 327.5 Reports.

Such reports of operations under this order as may be required by the Federal Emergency Management Agency, shall be submitted to the Director.

PART 328—GENERAL POLICIES FOR STRATEGIC AND CRITICAL MATERIALS STOCKPILING (DMO-11)

Sec.
328.1 Purpose.
328.2 Policies.
328.3 Delegation of Authority.

AUTHORITY: Strategic and Critical Materials Stock Piling Act, as amended, 50 U.S.C. 98; National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; Executive Order 12148 of July 20, 1979, 44 FR 43239; Executive Order 12155 of September 10, 1979, 44 FR 53071.

SOURCE: 45 FR 44584, July 1, 1980, unless otherwise noted.

§ 328.1 Purpose.

This part sets forth revised policies for the administration of strategic and critical materials stockpiling.

§ 328.2 Policies.

By virtue of the authority vested in me by Executive Order 11051, the following policies are promulgated to govern the administration of strategic and critical materials stockpiling:

(a) *General.* The strategic stockpile shall be so administered as to assure the availability of strategic and critical materials in times of national emergency.

(b) *Period covered by stockpiling.* All strategic stockpile goals for conventional war shall be limited to meeting estimated shortages of materials for the first three years of a war.

(c) *Stockpile objectives.* Strategic stockpile goals shall be adequate for supplies of these materials in time of national emergency.

(d) *Emergency requirements.* The requirements estimates for use in times of national emergency, where appropriate, reflect specific requirements to the extent available. It shall be assumed that the total requirements will approximate the capacity of industry to consume, taking into account necessary wartime limitation, conservation and substitution measures. Departments and agencies having responsibilities with regard to requirements data on stockpile materials shall review such data and provide, upon his request, the Director of the Federal Emergency Management Agency with information as to all significant changes.

(e) *Emergency supplies.* Estimates of supply for the mobilization period shall be based on readily available capacity and known resources in the United States and such other countries as directed by the National Security Council. Departments and agencies having the responsibilities with regard to supply data on stockpile materials shall review such data and provide the Director of the Federal Emergency Management Agency upon his request, with information as to all significant changes.

(f) *Provision for special-property materials.* Arrangements shall be made for the regular availability of objective scientific advice to assist in the evaluation of prospective needs for high-temperature and other special-property materials. Such materials shall be stockpiled if reasonably firm minimum requirements indicate the existence of a supply deficit in the event of an emergency.

(g) *Supply-requirements reviews.* The supply-requirements balance for any material that is now or may become important to defense shall be kept under continuing surveillance. Supply-requirements data submitted pursuant to paragraphs d. and e. above shall be examined upon receipt. A full-scale review may be undertaken at any time that a change is believed to be taken place that would have a significant bearing on the wartime readiness position. Priority of review shall be given to materials under procurement.

(h) *Procurement policy.* Unfilled objectives shall be attained expeditiously by cash procurement or otherwise as the Director shall deem appropriate. Long-term contracts shall contain termination clauses whenever possible. All feasible measures for meeting materials deficits in an emergency shall be considered. Stockpiling shall be undertaken only when it is clear that it is the best solution.

(i) *Maintenance of the mobilization base.* A portion of the mobilization base comprises existing or projected productive capacity the output of which will be relied on to fill defense requirements. All inventories of Government-owned materials held for long-term storage are a part of the mobilization base and should be weighed in determining the need for a relevant portion of the productive segment of the mobilization base. The maintenance of any portion of the productive segment of the mobilization base through stockpile procurement shall be undertaken only within unfilled stockpile objectives.

(j) *Upgrading to ready usability.* In order to satisfy the initial surge of abnormal demands following intensive mobilization in a period of national emergency, stockpile objectives of upgraded forms of such materials shall be established for immediate use in such circumstances. For this purpose a minimum readiness inventory shall be provided near centers of consumption. Materials in Government inventories may be upgraded for such stockpiling purposes only when the net cost of such processing including transportation and handling is less than the cost of new material. Materials should be upgraded to forms which will permit the greatest use-flexibility. Surplus materials may be used to pay for the upgrading of the same or other materials required to meet objectives providing that the use of excess materials for this purpose is in conformance with disposal criteria.

(k) *Beneficiation of subspecification materials.* Subspecification-grade materials in Government inventories may be beneficiated within the limits of the objectives when this can be accomplished at less cost than buying new material.

(l) *Cancellation of commitments.* Commitments for deliveries to national stockpile and Defense Production Act inventories beyond the objectives shall be canceled or reduced when settlements can be arranged which would be mutually satisfactory to the supplier and the Government and which would not be disruptive to the economy or to projects essential to the national security. Such settlements may take into account anticipated profits and cover adjustments for above-market premiums. The settlement of commitments may be made through the payment of cash or through the use of surplus materials. Responsibility with respect to the settlement of commitments in the light of overall interest of the Government rests with the Administrator of General Services who shall keep other agencies advised and consult with them to the extent appropriate.

(m) *Retention of other inventories.* Within the limits of unfilled stockpile objectives, stockpile-grade materials in the Defense Production Act and the supplemental stockpile inventories shall be retained for national stockpile purposes.

(n) *Disposals:* (1) The Director of the Federal Emergency Management Agency will authorize the disposal of excess materials only after due regard to: (i) Avoidance of serious disruption of the usual markets of producers, processors and consumers, and (ii) the protection of the United States against avoidable loss.

(2) In general, excess materials constitute unneeded assets and shall be disposed of as expeditiously as possible.

(3) In making such disposals preference shall be given to materials that deteriorate, that are likely to become obsolete, that do not meet quality standards, or that do not have stockpile objectives.

(4) The Administrator of General Services shall be responsible for disposal of excess materials. He shall advise the Secretary of State and the appropriate Assistant to the President in advance on all disposal plans.

(o) *Government use.* Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof. Direct use means use in a Government-owned and operated facility and use in a Government-owned facility which is operated by a contractor for the Government. Indirect Government use means use by prime contractors and all tiers of subcontractors in the production of items being procured by the Government.

§ 328.3 Delegation of authority—Preparation of reports.

The Administrator of General Services shall prepare on behalf of the Director of the Federal Emergency Management Agency and forward to him for transmittal to the Congress reports as required by the Director.

PART 329—USE OF PRIORITIES AND ALLOCATION AUTHORITY FOR FEDERAL SUPPLY CLASSIFICATION (FSC) COMMON USE ITEMS (DMO-12)

Sec.
329.1 Purpose.
329.2 Policies.
329.3 Procedures.
329.4 Implementation.

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. App. 2601 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; Executive Order 12148 of July 20, 1979, 44 FR 43239; Executive Order 10480 of August 14, 1953, (18 FR 4939) as amended.

SOURCE: 45 FR 44585, July 1, 1980, unless otherwise noted.

§ 329.1 Purpose.

This part provides policy guidance concerning the use of priorities and allocation authority under Title I of the Defense Production Act of 1950, as amended, for the procurement of common use items in the Federal Supply Classification (FSC).

§ 329.2 Policies.

The following guidance is provided pursuant to the Defense Production Act of 1950, as amended; section 201 of

Executive Order 10480, and § 322.2 of this chapter (DMO-3).

(a) Priority ratings under Title I of the Defense Production Act of 1950, as amended, are not authorized for certain FSC Groups, Classes, and Items:

(1) Which are of the types commonly available in commercial markets for general consumption,

(2) Which do not require major modification when purchased for military or other ratable government use, and

(3) Which are in sufficient supply as to cause no hindrance to the accomplishment of military or other national defense objectives.

Such Groups, Classes, and Items will be as specified from time to time by the Department of Commerce with the approval of the Federal Emergency Management Agency. Procurement in these Groups, Classes, and Items is to be made without priority assistance, including single service procurement that may include defense and defense-supporting needs. In the event procurement difficulties are encountered which threaten timely delivery, application for special assistance may be made for those categories of supply authorized special assistance in existing lists, and must be accompanied by full justification to support the need for such assistance.

(b) Priority ratings may be used for the procurement of other authorized FSC Groups, Classes, and Items only in quantities required to meet the needs of approved programs of ratable agencies. The quantities of current procurement of each Group, Class, and Item shall be based on and shall not exceed the ratio of rated purchases to total purchases for that Group, Class, and Item that was consummated in the 6-month period preceding the first day of January and July in each year. Any other periodic cycle considered suitable and agreed to by the Domestic and International Business Administration, Department of Commerce, and the procuring agency may be substituted.

(c) In the interest of minimizing administrative costs, where rated procurement under paragraph (b)(2) of this section, constitutes 97 percent or more of the total procurement of a Group, Class, or Item, all of the Group, Class, or Item may be bought on ratings.

§ 329.3 Procedures.

Requests for additional authorizations of Classes, Groups, or Items should be presented to General Services Administration (AP), Washington, D.C. 20405, accompanied by a statement of justification indicating why the Class, Group, or Item should be regarded as necessary or appropriate to promote the national defense and why defense-related requirements cannot be met without the use of priorities.

§ 329.4 Implementation.

Departments and agencies involved with this program shall issue implementing instructions and directives no later than 30 work days from the effective date of this order. Copies of such instructions, directives, and related documents shall be furnished to the General Services Administration (AP) on a routine basis as issued.

PART 330—POLICY GUIDANCE AND DELEGATION OF AUTHORITIES FOR USE OF PRIORITIES AND ALLOCATIONS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES IN ACCORDANCE WITH SUBSECTION 101(c) OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED (DMO-13)

Sec.

330.1 Purpose.
330.2 Policies.
330.3 Delegation of Authority.

AUTHORITY: Defense Production Act of 1950, as amended, including amendment to sec. 101(c) by section 104 of the Energy Policy and Conservation Act (Pub. L. 94-163) 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 C.F.R. 1978 Comp. p. 329; Executive Order 12148 of July 20, 1979, 44 F.R. 43239; Executive Order 11912 of April 13, 1976.

SOURCE: 45 FR 44586, July 1, 1980, unless otherwise noted.

§ 330.1 Purpose.

This part:

(a) Establishes policy guidance on determination and use of priorities and allocations for materials and equipment to maximize domestic energy supplies pursuant to section 104 of the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 878), which added subsection 101(c) to the Defense Production Act of 1950, as amended (the Act); and

(b) Delegates authority and assigns responsibility related thereto pursuant to sections 7 and 8 of Executive Order 11912, dated April 13, 1976.

§ 330.2 Policies.

(a) The authority of subsection 101(c) of the Act to require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment to maximize domestic energy supplies shall be limited to those exceptional circumstances when it is found that:

(1) Such supplies of material and equipment are scarce, critical, and essential; and

(2) The maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies, or the construction and maintenance of energy facilities, cannot reasonably be accomplished without exercising this authority.

(b) The authority contained in subsection 101(c) shall not be used to require priority performance under contracts or orders relating to, or the allocation of, any supplies of materials and equipment except for programs or projects to maximize domestic energy supplies as specifically determined by the Secretary of Energy, after coordination with the Director, Federal Emergency Management Agency.

(c) The allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment in support of authorized programs or projects shall be so undertaken as to ensure that:

(1) Supplies of the specified materials and equipment are available to the extent practicable on time and in proper quantity to authorized programs or projects.

(2) The demands of these authorized programs or projects are distributed among suppliers on a fair and equitable basis.

(3) Allotments of supplies of materials and equipment are not made in excess of actual current requirements of these authorized programs or projects.

(4) Fulfillment of the needs of these authorized programs and projects are achieved in such manner and to such degree as to minimize hardship in the market place.

(d) The authority of subsection 101(c) of the Act will not be used to control the general distribution of any supplies of material and equipment in the civilian market, as that phrase is used in subsection 101(b) of the Act, except after Presidential approval as required by subsection 7(d) of Executive Order 11912.

§ 330.3 Delegation of authority.

(a) The functions of the Director of the Federal Management Agency under subsection 101(c) of the Act are hereby delegated to the Secretary of Commerce with respect to the areas of responsibility designated and subject to the limitations prescribed and section 7 of Executive Order 11912. Specifically:

(1) The Secretary of Commerce is delegated the function, provided in subsection 101(c)(1) of the Act, of requiring the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment to maximize domestic energy supplies, if the findings specified in subsection 101(c)(3) of the Act are made.

(2) The Secretary of Commerce is delegated those functions provided in subsection 101(c)(3) of the Act, but shall redelegate to the Secretary of Energy the function of making the findings that supplies of materials and equipment are critical and essential to maximize domestic energy supplies. The Secretary of Commerce shall retain the functions of finding that supplies of materials and equipment are scarce, and that the purposes described in subsection 101(c)(3)(B) of the Act cannot reasonably be accomplished without exercising the author-

ity specified in subsection 101(c)(1). This finding will include, to the extent practicable, an assessment of the effects of using the authority for the project in question on other significantly impacted projects.

(b) The Director of the Federal Emergency Management Agency shall be responsible for the overall coordination and direction of the functions provided by subsection 101(c) of the Act in a manner similar to the exercise of functions under subsections 101(a) and 101(b) of the Act. In line with these functions, the Director is also responsible for resolving any conflicts between claimant agencies regarding particular supplies of materials and equipment. In addition, the Federal Emergency Management Agency will monitor the impact of the implementation of the authorities of subsection 101(c) and other authorities under section 101 of the Defense Production Act on each other and on the national economy.

(c) The functions assigned, delegated, or required to be redelegated by this order to the Secretary of Commerce and the Secretary of Energy may not be redelegated to other agencies without first being coordinated with the Director, Federal Emergency Management Agency.

(d) Procedures to execute the above delegations will be carried out in accordance with guidance provided by the Director, Federal Emergency Management Agency, pursuant to this order and Executive Order 11912.

PART 331—PRESERVATION OF THE MOBILIZATION BASE THROUGH THE PLACEMENT OF PROCUREMENT AND FACILITIES IN LABOR SURPLUS AREAS

Sec.

331.1 Purpose.
331.2 Policy.
331.3 Scope and Applicability.
331.4 Special Consideration
331.5 Production Facilities.

AUTHORITY: Reorganization Plan No. 3 of 1978, Executive Order 10480, as amended, Executive Order 12148.

Source: 45 FR 34885, May 23, 1980. Redesignated at 45 FR 44575, July 1, 1980, unless otherwise noted.

§ 331.1 Purpose.

Success of the national defense program depends upon efficient use of all of our resources, including the labor force and production facilities, which are preserved through utilizing the skills of both management and labor. A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of new workers move to labor surplus areas, heavy burdens are placed on community facilities, such as schools, hospitals, housing, transportation, and utilities. On the other hand, when unemployment develops in certain areas, unemployment costs increase the total cost to the Government, and plants, tools, and workers' skills remain idle and unable to contribute to our national defense program. Consequently, it is the purpose of Defense Manpower Policy No. 4B to direct attention to the potential of labor surplus areas when awarding appropriate procurement contracts and when locating new plants or facilities.

§ 331.2 Policy.

(a) It is the policy of the Federal Government to award appropriate contracts to eligible labor surplus area concerns, to place production facilities in labor surplus areas, and to make the best use of our natural, industrial and labor resources in order to achieve the following objectives:

(1) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;

(2) To maintain productive facilities;

(3) To improve utilization of the Nation's total economic potential by making use of the labor force resources of each area; and

(4) To help ensure timely delivery of required goods and services and to promote readiness for mobilization by locating procurement where the needed labor force and facilities are fully available.

(b) This policy is consonant with the intent of Pub. L. 95-89 and Pub. L. 95-507 as implemented by EO 12073. In carrying out this policy, Federal departments and agencies shall be guided by Executive Order 12073, the policy direction of the Office of Federal Procurement Policy and implementing regulations.

§ 331.3 Scope and applicability.

The provisions of this policy apply to all Federal departments and agencies, except as otherwise prohibited by law. In addition to these normal duties;

(a) The Secretary of Commerce shall:

(1) In cooperation with State economic development agencies, the Secretary of Defense, the Administrator of General Services, and the Administrator of Small Business Administration, assist concerns which have agreed to perform contracts in labor surplus areas in obtaining Government procurement business by providing such concerns with timely information on proposed Government procurements.

(2) Urge concerns planning new production facilities to consider the advantages of locating in labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planning industrial parks, industrial development organizations, expanding tourist business, and available Federal aids.

(b) The Administrator of the Small Business Administration shall make available to small business concerns in labor surplus areas all of its services, endeavor to ensure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(c) OFPP shall coordinate the maintenance by Federal agencies of current information on the manufacturing capabilities of labor surplus area concerns with respect to Government procurement and disseminate such information to Federal departments and agencies.

§ 331.4 Special consideration

When an entire industry that sells a significant proportion of its production to the Government is generally depressed or has a significant proportion of its production, manufacturing and service facilities located in a labor surplus area, the Director, Federal Emergency Management Agency, or successor in function, after notice to and hearing of interested parties, will give consideration to appropriate measures applicable to the entire industry.

§ 331.5 Production facilities.

All Federal departments and agencies shall give consideration to labor surplus areas in the selection of sites for Government-financed production facilities, including expansion, to the extent that such selection is consistent with existing law and essential economic and strategic factors.

PART 332—VOLUNTARY AGREEMENTS UNDER SECTION 708 OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

Sec.
332.1 General provisions.
332.2 Developing voluntary agreements.
332.3 Carrying out voluntary agreements.
332.4 Termination or modifying voluntary agreements.
332.5 Public access to records and meetings.

AUTHORITY: Sec. 708, Defense Production Act of 1950, as amended (50 U.S.C. App. 2158); E.O. 10480, 3 CFR 1949-1953 Comp. p. 961, as amended; E.O. 12148, 44 FR 43239.

SOURCE: 46 FR 2350, Jan. 9, 1981, unless otherwise noted.

§ 332.1 General provisions.

(a) Pursuant to Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), the President may consult with representatives of industry, business, financing, agriculture, labor, or other interests, and may approve the making of voluntary agreements to help provide for the defense of the United States by developing preparedness programs and expanding productive capacity and supply beyond levels needed to meet essential civilian demand.

(b) *Sponsor.* (1) As used in this part, "sponsor" of a voluntary agreement is an officer of the Government who, pursuant to a delegation or redelegation of the functions given to the President by Section 708 of the Defense Production Act (DPA) of 1950, as amended, proposes or otherwise provides for the development or carrying out of a voluntary agreement.

(2) The use of voluntary agreements, as authorized by Section 708 of the DPA to help provide for the defense of the United States through the development of preparedness programs, is an activity coordinated by the Director of the Federal Emergency Management Agency, as provided by Sections 101 and 501(a) of Executive Order 10480, as amended.

(3) The sponsor of a voluntary agreement shall carry out sponsorship functions subject to the direction and control of the Director of the Federal Emergency Management Agency.

(c) This part applies to the development and carrying out under Section 708 of the DPA, as amended, of all voluntary agreements, and the carrying out of any voluntary agreement which was entered into under former Section 708 of the DPA and in effect immediately prior to April 14, 1976, and which is in a period of extension as authorized by subsection 708(f)(2) of the DPA.

(d) The rules in the part void any provision of a voluntary agreement to which they apply, if that provision is contrary to or inconsistent with them. Each voluntary agreement shall be construed as containing every substantive provision that these rules require, whether or not a particular provision is included in the agreement.

(e) Pursuant to subsection 708(d) of the DPA, the sponsor may establish such advisory committees as he deems to be necessary for developing or carrying out voluntary agreements. Such advisory committees shall comply with this part as well as with the requirements and procedures of the Federal Advisory Committee Act (Pub. L. 92-463, as amended).

§ 332.2 Developing voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which voluntary agreements may be developed through consultation, pursuant to subsection 708(c) of the DPA.

(b) *Proposal to develop an agreement.* (1) A sponsor who wishes to develop a voluntary agreement shall submit to the Attorney General and the Director of the Federal Emergency Management Agency a document proposing the agreement. The proposal will include statements as to: the purpose of the agreement; the factual basis for making the finding required in subsection 708(c)(1) of the DPA; the proposed participants in the agreement; and any coordination with other Federal agencies accomplished in connection with the proposal.

(2) If the Attorney General, after consultation with the Chairman of the Federal Trade Commission, approves this proposal, the sponsor shall then initiate one or more meetings of interested persons to develop the agreement.

(c) *Conduct of meetings held to develop the agreement.* (1) The sponsor shall give to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate written notice of each meeting to develop a voluntary agreement. The sponsor shall also publish in the FEDERAL REGISTER notice of the time, place, and nature of each meeting at least seven days prior to the meeting.

(2) The sponsor shall chair each meeting held to develop a voluntary agreement. Both the Attorney General and the Chairman of the Federal Trade Commission, or their delegates, shall attend each of these meetings.

(3) Any interested person may attend a meeting held to develop a voluntary agreement, unless the sponsor of the agreement limits attendance pursuant to Section 5 of this part.

(4) Any interested person may, as set out in the FEDERAL REGISTER meeting notice, submit written data and views concerning the proposed voluntary agreement, and at the discretion of the Chairman of the meeting, may be

given the opportunity for oral presentation.

(d) *Maintenance of records.* (1) The sponsor is responsible for the making of a full and verbatim transcript of each meeting. The Chairman shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, and any other party or repository required by law.

(2) The sponsor of a voluntary agreement shall maintain each meeting transcript and voluntary agreement, and make them available for public inspection and copying the extent required by Section 5 of this part.

(e) *Effectiveness of agreements.* The following steps must occur before a new voluntary agreement or an extension of an existing agreement may become effective:

(1) The sponsor must approve the agreement and certify in writing that it is necessary to carry out the purposes of subsection 708(c)(1) of the DPA;

(2) The Director of the Federal Emergency Management Agency must approve this certification, and submit it to the Attorney General with a request for a written finding; and

(3) The Attorney General, after consulting with the Chairman of the Federal Trade Commission, must issue a written finding that the purposes of subsection 708(c)(1) can not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

§ 332.3 Carrying out voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which the participants in each approved voluntary agreement shall carry out the agreement.

(b) *Participants.* The participants in each voluntary agreement shall be reasonably representative of the appropriate industry or segment of that industry.

(c) *Conduct of meetings held to carry out an agreement.* (1) The sponsor of a voluntary agreement shall initiate, or approve in advance, each meeting of the participants in the agreement held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the agreement.

(2) The sponsor shall provide to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate prior notice of the time, place, and nature of each meeting, and a proposed agenda of each meeting. The sponsor shall also publish in the FEDERAL REGISTER, reasonably in advance of each meeting, a notice of time, place, and nature of the meeting. If the sponsor has determined, pursuant to Section 5 of this Part, to limit attendance at the meeting, the sponsor shall publish this FEDERAL REGISTER notice within ten days of the meeting.

(3) Any interested person may attend a meeting held to carry out a voluntary agreement unless the sponsor has restricted attendance pursuant to Section 5 of this Part. A person attending a meeting under this section may present oral or written data, views, and arguments to any limitations on the manner of presentation that the sponsor may impose.

(4) No meeting shall be held to carry out any voluntary agreement unless a Federal employee, other than an individual employed pursuant to 5 U.S.C. 3109, is in attendance. Any meeting to carry out a voluntary agreement may be attended by the sponsor of the agreement, the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, or their delegates.

(5) Notwithstanding any other provision of this section, a meeting between a single participant and the sponsor solely to deliver or exchange information is not subject to the requirements and procedures of this section, provided that a copy of the information is promptly delivered to the Attorney General, the Chairman of the Federal Trade Commission, and the Director

of the Federal Emergency Management Agency.

(d) *Maintenance of records.* (1) The participants in any voluntary agreement shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement. The participants shall agree, in writing, to make available to the sponsor, the Attorney General, the Chairman of the Federal Trade Commission and the Director of the Federal Emergency Management Agency for inspection and copying at reasonable times and upon reasonable notice any item that this section requires them to maintain.

(2) Any person required by this paragraph to maintain records shall indicate specific portions, if any, that such person believes should not be disclosed to the public pursuant to Section 5 of this Part, and the reasons therefor. Any item made available to a Government official named in this paragraph shall be available from that official for public inspection and copying to the extent set forth in § 166.5 of this part.

§ 332.4 Termination or modifying voluntary agreements.

The Attorney General may terminate or modify a voluntary agreement, in writing, after consultation with the Chairman of the Federal Trade Commission and the sponsor of the agreement. The sponsor of the agreement, with the concurrence of or at the direction of the Director of the Federal Emergency Management Agency, may terminate or modify a voluntary agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Any person who is a party to a voluntary agreement may terminate his participation in the agreement upon written notice to the sponsor. Any antitrust immunity conferred upon the participants in that agreement by subsection 708(j) of the DPA shall not apply to any act or omission occurring after the termination of the voluntary agreement. Immediately upon modification of a voluntary agreement, no antitrust immunity shall apply to any subsequent act or omission that is beyond the scope of the modified agreement.

§ 332.5 Public access to records and meetings.

(a) Interested persons may, pursuant to 5 U.S.C. 552, inspect or copy any voluntary agreement, minutes of meetings, transcripts, records, or other data maintained pursuant to these rules.

(b) Except as provided by paragraph (c) of this section, interested persons may attend any part of a meeting held to develop or carry out a voluntary agreement pursuant to these rules.

(c) The sponsor of a voluntary agreement may withhold material described in this section from disclosure and restrict attendance at meetings only on the grounds specified in:

(1) Section 552(b)(1) of 5 U.S.C., which applies to matter specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This section shall be interpreted to included matter protected under Executive Order 12065, dated June 28, 1978 (3 CFR 1979-1975 Comp. p. 678), establishing categories and criteria for classification; and

(2) Section 552(b)(3) of 5 U.S.C., which applies to matter specifically exempted from disclosure by statute; and

(3) Section 552(b)(4) of 5 U.S.C., which applies to trade secrets and commercial or financial information obtained from a person as privileged and confidential.

PARTS 333–350—[RESERVED]

PART 351—RADIOLOGICAL EMERGENCY RESPONSE PLANNING AND PREPAREDNESS

Subpart A—General

Sec.
351.1 Purpose.
351.2 Scope.
351.3 Limitation of scope.

Subpart B—Federal Radiological Preparedness Coordinating Committee

351.10 Establishing of committees.
351.11 Functions of committees.

Subpart C—Interagency Assignments

Sec.
351.20 The Federal Emergency Management Agency.
351.21 The Nuclear Regulatory Commission.
351.22 The Environmental Protection Agency.
351.23 The Department of Health and Human Services.
351.24 The Department of Energy.
351.25 The Department of Transportation.
351.26 The Department of Agriculture.
351.27 The Department of Defense.
351.28 The Department of Commerce/NOAA.

AUTHORITY: 5 U.S.C. 552; Reorganization Plan No. 3, 1978, 43 FR 41943; Executive Order 12127, March 31, 1979, 44 FR 19367; Executive Order 12148, July 20, 1979, 44 FR 43239; Executive Order 12241, September 29, 1980, 45 FR 64879; President's Directive of December 7, 1979.

SOURCE: 45 FR 69905, Oct. 22, 1980, unless otherwise noted.

Subpart A—General

§ 351.1 Purpose.

This part sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. Assignments in this part are applicable to radiological accidents at fixed nuclear facilities and transportation accidents involving radioactive materials.

§ 351.2 Scope.

The emergency planning and preparedness responsibilities covered by this part relate to consequences and activities which extend beyond the boundaries of any fixed nuclear facility with a potential for serious consequences and the immediate area of a transportation accident involving radioactive materials.

§ 351.3 Limitation of scope.

(a) This part covers Federal agency assignments and responsibilities in connection with State and local emergency response plans and preparedness measures. It does not set forth criteria used in the review and approval of these plans and does not include any of the requirements associated with FEMA findings and determinations on the adequacy of State and local government radiological emergency preparedness. FEMA has published a separate proposed rule on procedures and criteria for reviewing and approving these plans and preparedness capabilities (45 FR 42341). Furthermore, this part does not set forth Federal agency responsibilities or capabilities for responding to an accident at a fixed nuclear facility or a transportation accident involving radioactive materials.

(b) Nothing in this part authorizes access to or disclosure of classified information required to be protected in accordance with Federal law or regulation in the interest of national security.

Subpart B—Federal Radiological Preparedness Coordinating Committee

§ 351.10 Establishing of committees.

(a) The Federal Radiological Preparedness Coordinating Committee (FRPCC) consists of the Federal Emergency Management Agency, which chairs the Committee, Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, Department of Agriculture, Department of Commerce, and, where appropriate and on an ad hoc basis, other Federal departments and agencies. In chairing the Committee, FEMA will be responsible for assuring that all agency assignments described in this rule are coordinated through the Committee and carried out with or on behalf of State and local governments.

(b) The Regional Assistance Committees (RACs), one in each of 10 standard Federal Regions,[1] consist of a FEMA Regional Representative, who chairs the Committee, and representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, Department of Agriculture, Department of Commerce, and, where appropriate, other Federal departments and agencies. The FEMA Chairman of the RACs will provide guidance and orientation to other agency members to assist them in carrying out their functions.

---

[1] I (Boston); II (New York); III (Philadelphia); IV (Atlanta); V (Chicago); VI (Dallas); VII (Kansas City); VIII (Denver); IX (San Francisco); and X (Seattle).

§ 351.11 Functions of committees.

(a) The FRPCC shall assist FEMA in providing policy direction for the program of Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. The FRPCC will establish subcommittees to aid in carrying out its functions; e.g., research, training, emergency instrumentation, public information and education. The FRPCC will assist FEMA in resolving issues relating to granting of final FEMA approval of a State plan. The FRPCC will coordinate research and study efforts of its member agencies related to State and local government radiological emergency preparedness to assure minimum duplication and maximum benefits to State and local governments. The FRPCC will also assure that the research efforts of its member agencies are coordinated with the interagency Radiation Research Committee.

(b) The RACs will assist State and local government officials in the development of their radiological emergency response plans, and will review these plans and observe exercise to evaluate adequacy of the plans. Each Federal agency member of the RACs will support the functions of these committees by becoming knowledgeable of Federal planning and guidance related to State and local radiological emergency response plans, of their counterpart State organizations and personnel, where their agency can assist in improving the preparedness, and by participating in RAC meetings.

Subpart C—Interagency Assignments

§ 351.20 The Federal Emergency Management Agency.

(a) Establish policy and provide leadership via the FRPCC in the coordination of all Federal assistance and guidance to State and local governments for developing, reviewing, assessing, and testing the State and local radiological emergency response plans.

(b) Issue guidance to other Federal agencies concerning their responsibilities for providing radiological emergency planning and preparedness assistance to State and local governments.

(c) Foster cooperation of industry, technical societies, Federal agencies and other constituencies in the radiological emergency planning and preparedness of State and local governments.

(d) Develop and promulgate preparedness criteria and guidance to State and local governments, in coordination with other Federal agencies, for the preparation, review and testing of State and local radiological emergency response plans.

(e) Provide assistance to State and local governments in the preparation, review, and testing of radiological emergency response plans.

(f) Assess, with the assistance of other Federal agencies, the adequacy of State and local government emergency response plans and the capability of the State and local government officials to implement them, (e.g., adequacy and maintenance of equipment, procedures, training, resources, and staffing levels and qualifications) and report the findings and determinations to NRC.

(g) Review and approve State radiological emergency response plans and preparedness in accordance with FEMA regulations.

(h) Develop, implement, and maintain a program of public education and information to support State and local radiological emergency response plans and preparedness.

(i) Develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. Develop and field test exercise materials and coordinate the Federal assistance required by States and localities in conducting exercises, including guidance for Federal observers.

(j) Develop, with NRC, scenarios for use by NRC licensed facility operators and State and local governments in testing and exercising radiological emergency plans.

(k) Issue guidance for establishment of State and local emergency instrumentation systems for radiation detection and measurement.

(l) Provide guidance and assistance, in coordination with NRC, to State and local governments concerning the storage and distribution of radioprotective substances (e.g., thyroid blocking agents) for use in radiological emergencies.

§ 351.21 The Nuclear Regulatory Commission.

(a) Assess NRC nuclear facility licensee emergency plans for adequacy to protect the health and safety of the public.

(b) Verify that nuclear facility licensee emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(c) Review FEMA's findings and determinations of State and local radiological emergency response plans for areas surrounding NRC licensed nuclear facilities.

(d) Take into account the overall state of emergency preparedness in making decisions to issue operating licenses or shut down licensed operating reactors, including the integration of assessments of emergency preparedness onsite by the NRC and offsite by FEMA.

(e) Where not already established, determine, in cooperation with other Federal agencies, the appropriate planning bases for NRC licensed nuclear facilities including distances, times and radiological characteristics.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(g) Participate with FEMA in: Assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(h) Provide representation to and support for the FRPCC and the RACs.

(i) Assist FEMA in the development, implementation, and maintenance of public information and education programs.

(j) Assist FEMA in developing scenarios for use by nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(k) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(l) Assist FEMA in the development and implementation of training programs for Federal, State and local radiological emergency preparedness and response personnel.

(m) Assist FEMA in providing guidance and assistance to State and local governments concerning the storage and distribution of radioprotective substances (e.g., thyroid blocking agents) for use in radiological emergencies.

§ 351.22 The Environmental Protection Agency.

(a) Establish Protective Action Guides (PAGs) for all aspects of radiological emergency response planning in coordination with appropriate Federal agencies.

(b) Prepare guidance for State and local governments on implementing PAGs, including recommendations on protective actions which can be taken to mitigate the potential radiation dose to the population. This guidance will be presented in the EPA "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents." (The preparation of PAGs related to human food and animal feed will be done in coordination with HHS/Food and Drug Administration.)

(c) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(d) Assist FEMA in development of technical training for State and local officials in radiation dose assessment, protective actions, and decisionmaking.

(e) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(f) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(g) Provide representation to and support for the FRPCC and the RACs.

(h) Assist FEMA in developing scenarios for use by nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(i) Assist FEMA in the development, implementation, and maintenance of public information and education programs.

§ 351.23 The Department of Health and Human Services.

(a) Develop and specify protective actions and associated guidance to State and local governments for human food, animal feed, (in coordination with the Environmental Protection Agency) and related health problems, including mental health and behavioral disturbances, which may be associated with radiological emergencies.

(b) Assist FEMA in the development, implementation, and maintenance of public information and education programs to support State and local government radiological emergency response plans and preparedness.

(c) Assist FEMA in the development and implementation of a radiological emergency response training program to support State and local government personnel in accident assessment, protective actions, and decisionmaking.

(d) Develop and assist in providing the requisite training programs for State and local health, mental health, and social service agencies.

(e) Provide guidance to State and local governments on the use of radioprotective substances (e.g., thyroid blocking agents) to include dosage and projected radiation exposures at which such drugs should be used.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(g) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(h) Provide representation to and support for the FRPCC and the RACs.

(i) Assist FEMA in developing scenarios for use by nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(j) Assist FEMA in the development and guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(k) Assist the State and local governments in the planning for the safe production, during radiological emergencies, of human food and animal feed in the emergency planning zones around fixed nuclear facilities.

(l) Assist FEMA, through the Interagency Radiation Research Committee, chaired by the Department of Health and Human Services, in the coordination and design of research applicable to State and local plans and preparedness.

§ 351.24 The Department of Energy.

(a) Determine the appropriate planning bases for DOE-owned and contractor nuclear facilities, including distances, time and radiological characteristics.

(b) Assess DOE nuclear facility emergency plans for adequacy in contributing to the health and safety of the public.

(c) Verify that DOE nuclear facility emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(d) Assist State and local governments, within the constraints of National security and in coordintion with FEMA, in the preparation of those portions of their radiological emergency response plans related to DOE-owned and contractor nuclear facilities and radioactive materials in transit.

(e) Review and assess FEMA's findings and determinations on the adequacy of and capability to implement State and local radiological emergency response plans for areas surrounding DOE nuclear facilities. Make independent assessments of the overall state of plans and preparedness.

(f) Serve as the lead agency for coordinating the development and issuance of interagency instructions and guidance to implement the Federal Radiological Monitoring and Assessment Plan (FRMAP) (formerly published as the Interagency Radiological Assistance Plan). The FRMAP provides the framework through which participating Federal agencies will coordinate their emergency radiological monitoring and assessment activities with those of State and local governments.

(g) Develop, maintain, and improve capability to detect and assess hazardous levels of radiation.

(h) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(i) Assist FEMA in the training of Federal, State, and local radiological emergency response personnel.

(j) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(k) Develop, with FEMA, scenarios for use by DOE facility operators and State and local governments in testing and exercising radiological emergency plans.

(l) Provide representation to and support for the FRPCC and the RACs.

(m) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

§ 351.25 The Department of Transportation.

(a) Assist FEMA in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency response plans.

(b) Assist FEMA in its review and approval of State and local radiological emergency response plans and in the evaluation of exercises to test such plans.

(c) Provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials.

(d) Provide representation to and support for the FRPCC and the RACs.

§ 351.26 The Department of Agriculture.

(a) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(b) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and prepardeness.

(c) Assist State and local governments in preparing to implement protective actions in food ingestion pathway emergency planning zones around fixed nuclear facilities.

(d) Develop, in coordination with FEMA and other Federal agencies, guidance for assisting State and local governments in the production, processing, and distribution of food resources under radiological emergency conditions.

(e) Assist FEMA in the training of Federal, State and local radiological emergency response personnel.

(f) Provide representation to and support for the FRPCC and the RACs.

§ 351.27 The Department of Defense.

(a) Determine appropriate planning bases for DOD-owned and contractor nuclear facilities and installations, including distances, time and radiological characteristics.

(b) Develop, with FEMA, scenarios for use by the Department of Defense nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review, and assessment of those portions of their radiological emergency response plans related to DOD-owned and contractor nuclear facilities and radioactive materials in transit.

§ 351.28 The Department of Commerce/NOAA.

(a) Provide an agreed upon set of needs of State and local governments for meteorological and hydrological services for responding to radiological emergencies.

(b) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(c) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(d) Assist FEMA in providing technical training for State and local officials in the use of meteorological information in responding to radiological emergencies.

(e) Provide representation to and support for the FRPCC and the RACs.

(f) Assist FEMA in the development of guidance for State and local governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(g) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Managment and Budget Circular A-62, serve as the coordinating agent for any multiagency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

PARTS 352–359—[RESERVED]

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Sec.
360.1 Purpose.
360.2 Description of program.
360.3 Eligible applicants.
360.4 Administrative procedures.
360.5 General provisions for State Cooperative Agreement.

AUTHORITY: Reorganization Plan No. 3 (3 CFR 1978 comp. p. 329); Executive Order 12127 (44 FR 19367); Executive Order 12148 (44 FR 43239).

SOURCE: 46 FR 1271, Jan. 6, 1981, unless otherwise noted.

§ 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result is an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

§ 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all

States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and participant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) Government Conducted Courses:

Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

(i) Career Development Courses: Phases I, II, and III,

(ii) Radiological Officer and Instructor Courses,

(iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) Government and Recipient Conducted Courses:

Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

(i) Emergency Management Workshops,

(ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) Recipient Conducted Courses:

This element requires the greatest degree of sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

(i) Radiological Monitoring,

(ii) Emergency Operations Simulating Training,

(iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval.

During FY 81 only, allowable cost will be funded at 100%. The projected program envisions a sharing of eligible costs in the future however.

§ 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

§ 360.4 Administrative procedures.

(a) *Award.* Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in § 360.2

(b) *Period of Agreement.* Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in § 360.2(b) to give continuity to the total training and education program.

(c) *Submission Procedure.* Each State applicant shall comply with the following procedures:

(1) *Issuance of a Request for Application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to Submit:* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application Package:* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting Agreements.* Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

§ 360.5 General provisions for State Cooperative Agreement.

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

PARTS 361–399—[RESERVED]

BLANK PAGE

CHAPTER IV—DEPARTMENT OF COMMERCE AND DEPARTMENT OF TRANSPORTATION

Part		*Page*
401	Shipping restrictions (T-1)	460
402	Shipments on American flag ships and aircraft (T-1, Int. 1)	461
403	Shipping restrictions; North Korea and the Communist-controlled area of Viet Nam (T-2)	462

PART 401—SHIPPING RESTRICTIONS (T-1)

Sec.
401.1 Prohibited transportation and discharge.
401.2 Application for adjustment or exceptions.
401.3 Reports.
401.4 Records.
401.5 Defense against claims for damages.
401.6 Violations.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154, as amended; Interpret or apply secs. 101, 705, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 3 CFR, 1949-1953 Comp. p. 962.

SOURCE: Transportation Order T-1, 30 FR 9092, July 21, 1965; 32 FR 15831, Nov. 17, 1967. Redesignated at 45 FR 44574, July 1, 1980, unless otherwise noted.

§ 401.1 Prohibited transportation and discharge.

No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time not identified by the symbol B in the last column of the Commodity Control List (339.1 of the Comprehensive Export Schedule, issued by the Bureau of International Commerce, Department of Commerce (15 CFR Parts 368-399), any article designated as arms, ammunition, and implements of war in the United States Munitions List (22 CFR Parts 121-128), or any commodity, including fissionable, materials controlled for export under the Atomic Energy Act of 1954, as amended, to any destination at the time in country groups X, Y, or Z as set forth in the Comprehensive Export Schedule (15 CFR 370.1(g)(2)), and no person shall discharge from any such ship or any such aircraft any such commodity or article at any such port or place or at any other port or place in transit to any such destination, unless a validated export license under the Export Control Act of 1949, as amended, under section 414 of the Mutual Security Act of 1954, as amended, or under the Atomic Energy Act of 1954, as amended, has been obtained for the shipment, or unless authorization for the shipment has been obtained from the Assistant Secretary for Domestic and International Business. This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, or any other officer, employee or agent of the owner of the ship or aircraft who participates in the transportation. The consular officers of the United States are furnished with current copies of the Commodity Control List and will advise which commodities are subject to this restriction.

§ 401.2 Application for adjustment or exceptions.

Any person affected by any provisions of this order may file an application for an adjustment or exception upon the ground that such provision works an exceptional hardship upon him, not suffered by others, or that its enforcement against him would not be in the interest of the national defense program. Such an application may be made by letter or telegram addressed to the Assistant Secretary for Domestic and International Business, Department of Commerce, Washington, D.C. 20230, reference T-1. If authorization is requested, any such application should specify in detail the material to be shipped, the name and address of the shipper and of the recipient of the shipment, the ports or places from which and to which the shipment is being made and the use to which the material shipped will be put. The application should also specify in detail the facts which support the applicant's claim for an exception.

§ 401.3 Reports.

Persons subject to this order shall submit such reports to the Assistant Secretary for Domestic and International Business as he shall require, subject to the terms of the Federal Reports Act.

§ 401.4 Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of shipments in sufficient detail to permit an audit that determines for each transaction that the provisions of this order have been met. This does not specify any particular accounting method and does not require alteration of the system of records customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

§ 401.5 Defense against claims for damages.

No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this order or any provision thereof, notwithstanding that this order or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

§ 401.6 Violations.

Any person who wilfully violates any provisions of this order or wilfully conceals a material fact or furnishes false information in the course of operation under this order is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

PART 402—SHIPMENTS ON AMERICAN FLAG SHIPS AND AIRCRAFT (T-1, INT. 1)

Sec.
402.1 Shipments from the United States.
402.2 Restricted commodities.
402.3 Addition of commodities to the Positive List.
402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.
402.5 Forwarding commodities previously shipped.
402.6 Relation to Transportation Order T-2.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071, E.O. 10480, 3 CFR, 1949-1953 Comp. p. 962.

SOURCE: Transportation Order T-1, Interpretation 1, 15 FR 9145, Dec. 21, 1950; 32 FR 15831, Nov. 17, 1967. Redesignated at 45 FR 44574, July 1, 1980, unless otherwise noted.

§ 402.1 Shipments from the United States.

Transportation Order T-1 applies to shipments from the United States, as well as to shipments from foreign ports, on American flag ships and aircraft.

§ 402.2 Restricted commodities.

The restrictions of Transportation Order T-1 apply to the transportation or discharge of (a) commodities on the Positive List (15 CFR Part 399) (as amended from time to time) of the Comprehensive Export Schedule of the Office of International Trade, Department of Commerce, (b) articles on the list of arms, ammunition and implements of war coming within the meaning of Proclamation No. 2776 of March 26, 1948, and (c) commodities, including fissionable materials, controlled for export under the Atomic Energy Act of 1946. The restrictions imposed by Transportation Order T-1 do not apply to other commodities, not within these restricted classes at the time of transportation or discharge, even though authorization for the export of the commodity from the United States to the particular destination is required under regulations of the Office of International Trade or under other Federal law or regulation. In this respect, Order T-1 is different from Order T-2 which applies to all commodities destined to Communist China. Order T-1 does not relax or modify any of the requirements of any other regulation or law.

§ 402.3 Addition of commodities to the Positive List.

Order T-1 applies to the transportation or discharge of commodities which are restricted at the time of transportation or discharge. Accordingly, if a commodity is added to the Positive List while the commodity is being transported on an American flag ship or aircraft, the restrictions of Order T-1 immediately apply and the commodity may not be transported to or discharged at any of the restricted ports or discharged in transit to one of the restricted ports, unless authorization under Order T-1 is obtained.

§ 402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.

Order T-1 does not prohibit an American flag ship or aircraft from going to or calling at one of the restricted ports, even though it has on board a commodity which could not be discharged at that port. (Note, however, that Order T-2 prohibits American flag ships and aircraft from calling at any port or other place in Communist China.) For example, an American flag ship may call at one of the restricted ports (except one in Communist China), even though it has on board the following classes of commodities:

(a) A Positive List commodity manifested to a destination outside the restricted area, with an export license and an export declaration showing the unrestricted destination at the ultimate destination, (b) a Positive List commodity destined for the restricted port of call which cannot be discharged there because there is no export license or authorization from the Assistant Secretary for Domestic and International Business permitting discharge at the restricted port of call, (c) a commodity of any kind destined for Communist China (the transportation and discharge of which is covered by Order T-2). None of these commodities may be discharged at the restricted port of call. Discharge of any of these commodities at the port covered by the restrictions of Order T-1 is prohibited and subject to penalty, regardless of the circumstances under which the discharge of the cargo at the restricted port occurs, unless appropriate authorization is obtained.

§ 402.5 Forwarding commodities previously shipped.

Order T-1 applies to transportation on or discharge from ships documented under the laws of the United States and aircraft registered under the laws of the United States. These restrictions apply either in the case of a discharge at one of the restricted ports or to discharge at any other port in transit to a restricted destination. The restrictions of Order T-1 do not apply to transportation by foreign carriers, as long as there is no prohibited transportation or discharge by or from a United States flag ship or aircraft after the issuance of Order T-1. Accordingly, if an American flag ship or aircraft, before the issuance of Order T-1, had transported restricted commodities manifested to restricted destinations, and had completed the transportation to a foreign intermediate point and had completed the discharge from the American flag ship or aircraft before the issuance of Order T-1, no violation of that order would have occurred, but Order T-1 would prohibit further shipment on an American flag ship or aircraft unless authorization under Order T-1 is obtained.

§ 402.6 Relation to Transportation Order T-2.

Transportation Order T-1 applies to the transportation of commodities to, or in transit to, destinations in Sub-Group A, Hong Kong or Macao. It applies, however, only to commodities on the Positive List of the Office of International Trade, arms and ammunition, and commodities controlled under the Atomic Energy Act (see section 2 of this interpretation). Transportation Order T-2 applies to the transportation of commodities of any kind which are destined to Communist China (Order T-2 also prohibits American ships and aircraft from calling at any port or place in Communist China). Since Communist China is in Sub-Group A, the restrictions of both orders apply to the transportation of commodities to Communist China or to any other point in transit to Communist China.

PART 403—SHIPPING RESTRICTIONS; NORTH KOREA AND THE COMMUNIST-CONTROLLED AREA OF VIET NAM (T-2)

Sec.
403.1 Prohibition of movement of American carriers to North Korea or to the Communist-controlled area of Vietnam.
403.2 Prohibition on transportation of goods destined for North Korea or the Communist-controlled area of Viet Nam.

Sec.
403.3 Persons affected.
403.4 Reports.
403.5 Records.
403.6 Defense against claims for damages.
403.7 Violations.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154.[1] Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 FR 4939, 3 CFR, 1953. Supp.; and sec. 4(a) Public Law 89-670, 80 Stat. 933; 49 U.S.C. 1653.

SOURCE: Transportation Order T-2 (Amended), 37 FR 25040, Nov. 25, 1972. Redesignated at 45 FR 44574, July 1, 1980, unless otherwise noted.

§ 403.1 Prohibition of movement of American carriers to North Korea or to the Communist-controlled area of Viet Nam.

No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to North Korea or to the Communist-controlled area of Viet Nam.

§ 403.2 Prohibition on transportation of goods destined for North Korea or the Communist-controlled area of Viet Nam.

No person shall transport, in any ship documented under the laws of the United States, or in any aircraft registered under the laws of the United States, to North Korea or to the Communist-controlled area of Viet Nam, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if he knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly for North Korea or for the Communist-controlled area of Viet Nam. No person shall discharge from any ship documented under the laws of the United States or from any aircraft registered under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States any material, commodity, or cargo of any kind which he knows or has reason to believe is destined for North Korea or for the Communist-controlled area of Viet Nam.

§ 403.3 Persons affected.

The prohibitions of this order apply to the owner of the ship or aircraft, to the master of the ship or aircraft, and to any other officer, employee, or agent of the owner of the ship or to any other person who participates in the prohibited activities.

§ 403.4 Reports.

Persons subject to this order shall submit such reports to either the Assistant Secretary of Commerce for Domestic and International Business, Assistant Secretary of Commerce for Maritime Affairs, or the Assistant Secretary of Transportation for Policy and International Affairs, for, respectively, cargoes, vessels or aircraft as shall be required, subject to the terms of the Federal Reports Act.

§ 403.5 Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of voyages and shipments in sufficient detail to permit an audit that will determine for each transaction that the provisions of this order have been met. This provision does not require any particular accounting method and does not require alteration of the system customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

§ 403.6 Defense against claims for damages.

No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this order or any provision, thereof, notwithstanding that this order or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

---

[1] Pub. L. 92-325, approved June 30, 1972, extended the Defense Production Act of 1950, as amended, to June 30, 1974.

§ 403.7 Violations.

Any person who willfully violates any provisions of this order, or willfully conceals a material fact, or furnishes false information in the course of operation under this order, shall, upon conviction, be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semiannually (January 1 and July 1).

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Tables
Table 1—Regulations Formerly Appearing in Title 44, Public Property and Works
Table 2—Regulations Transferred to Title 44, Emergency Management and Assistance
List of CFR Sections Affected

BLANK PAGE

Table of CFR Titles and Chapters

(As of September 30, 1981)

Title 1—General Provisions

Chap.	
I	Administrative Committee of the Federal Register (Parts 1-49)
II	Office of the Federal Register (Parts 50-299)
III	Administrative Conference of the United States (Parts 300-399)
IV	Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

	Proclamations
	Executive Orders
	Presidential Documents Other Than Proclamations and Executive Orders
I	Executive Office of the President (Parts 100-199)

Title 4—Accounts

I	General Accounting Office (Parts 1-99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
III	General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1-1199)
II	Merit Systems Protection Board (Parts 1200-1299)
III	Office of Management and Budget (Parts 1300-1399)
IV	Advisory Committee on Federal Pay (Parts 1400-1499)
V	The International Organizations Employees Loyalty Board (Parts 1500-1599)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
IX	Appalachian Regional Commission (Parts 1900-1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100-2199)
XIV	Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500-2599)

Title 6—Economic Stabilization

VI	Assistant Secretary for Administration, Department of the Treasury (Parts 600-699)
VII	Council on Wage and Price Stability (Parts 700-799)

Title 7—Agriculture

	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210-299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
V	Agricultural Research Service, Department of Agriculture (Parts 500-599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600-699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
XII	Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300-1399)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800-2099)

Title 7—Agriculture—Continued

Chap.	
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
XXVI	Office of the Inspector General, Department of Agriculture (Parts 2600-2699)
XXVIII	Food Safety and Quality Service, Department of Agriculture (Parts 2800-2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900-2999)
XXX	Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
II	Agricultural Marketing Service (Packers and Stockyards), Department of Agriculture (Parts 200-299)
III	Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I	Nuclear Regulatory Commission (Parts 0-199)
II	Department of Energy (Parts 200-699)
III	Department of Energy (Parts 700-999)
X	Department of Energy (General Provisions) (Parts 1000-1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1-199)
II	Federal Reserve System (Parts 200-299)
III	Federal Deposit Insurance Corporation (Parts 300-399)
IV	Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.	
V	Federal Home Loan Bank Board (Parts 500-599)
VI	Farm Credit Administration (Parts 600-699)
VII	National Credit Union Administration (Parts 700-799)
VIII	Federal Financing Bank (Parts 800-899)
XI	Federal Financial Institutions Examination Council (Parts 1100-1199)
XII	Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1-199)
III	Economic Development Administration, Department of Commerce (Parts 300-399)
IV	Chrysler Corporation Loan Guarantee Board (Parts 400-499)
V	Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1-199)
II	Civil Aeronautics Board (Parts 200-399)
V	National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

	SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 20-199)
II	National Bureau of Standards, Department of Commerce (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)
IV	Foreign-Trade Zones Board (Parts 400-499)
V	United States Metric Board (Parts 500-599)
VI	Bureau of Industrial Economics, Department of Commerce (Parts 600-699)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts [illegible]999)
XII	United States Travel Service, Department of Commerce (Parts 1200-1299)
XIII	East-West Foreign Trade Board (Parts 1300-1999)

Title 15—Commerce and Foreign Trade—Continued

Chap.	
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000-2099)
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0-999)
II	Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1-199)
II	Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)
III	Delaware River Basin Commission (Parts 400-499)
IV	Office of Water Resources Research, Department of the Interior (Parts 500-599)
VI	Water Resources Council (Parts 700-799)
VIII	Susquehanna River Basin Commission (Parts 800-899)
XIII	Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1-199)
II	United States International Trade Commission (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)
II	Railroad Retirement Board (Parts 200-399)
III	Social Security Administration, Department of Health and Human Services (Parts 400-499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
V	Employment and Training Administration, Department of Labor (Parts 600-699)

Title 20—Employees' Benefits—Continued

Chap.	
VI	Employment Standards Administration, Department of Labor (Parts 700-799)
VII	Benefits Review Board, Department of Labor (Parts 800-899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

I	Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I	Department of State (Parts 1-199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200-299)
III	Peace Corps (Parts 300-399)
IV	International Joint Commission, United States and Canada (Parts 400-499)
V	International Communication Agency (Parts 500-599)
VI	United States Arms Control and Disarmament Agency (Parts 600-699)
VII	Overseas Private Investment Corporation (Parts 700-799)
VIII	Employee-Management Relations Commission (Parts 800-899)
IX	Foreign Service Grievance Board (Parts 900-999)
X	Inter-American Foundation (Parts 1000-1099)
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)
XII	United States International Development Cooperation Agency (Parts 1200-1299)
XIII	Board for International Broadcasting (Parts 1300-1399)
XIV	Foreign Service Labor Relations Board;Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1-999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

Chap.	
I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)
II	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
IV	Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
VII	New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799)
VIII	Low-Income Housing, Department of Housing and Urban Development (Parts 800-899)
IX	Office of Interstate Land Sales Registration, Department of Housing and Urban Development (Parts 1700-1799)
X	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)
XV	Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
XX	Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Parts 3200-3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

Chap.

I Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

I Department of Justice (Parts 0-199)

III Federal Prison Industries, Department of Justice (Parts 300-399)

V Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)

SUBTITLE B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100-199)

II Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)

III National Railroad Adjustment Board (Parts 300-399)

IV Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)

V Wage and Hour Division, Department of Labor (Parts 500-899)

IX Construction Industry Collective Bargaining Commission (Parts 900-999)

X National Mediation Board (Parts 1200-1299)

XII Federal Mediation and Conciliation Service (Parts 1400-1499)

XIV Equal Employment Opportunity Commission (Parts 1600-1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)

XX Occupational Safety and Health Review Commission (Parts 2200-2499)

XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)

XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1-199)

II Geological Survey, Department of the Interior (Parts 200-299)

III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)

VI Bureau of Mines, Department of the Interior (Parts 600-699)

Title 30—Mineral Resources—Continued

Chap.	
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)
	SUBTITLE B—Regulations Relating to Money and Finance
I	Monetary Offices, Department of the Treasury (Parts 51-199)
II	Fiscal Service, Department of the Treasury (Parts 200-399)
IV	Secret Service, Department of the Treasury (Parts 400-499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1-499)
V	Department of the Army (Parts 500-699)
VI	Department of the Navy (Parts 700-799)
VII	Department of the Air Force (Parts 800-1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900-1999)
XX	Information Security Oversight Office (Parts 2000-2099)
XXI	National Security Council (Parts 2100-2199)
XXIV	Office of Science and Technology Policy (Parts 2400-2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700-2799)
XXVIII	Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Corps of Engineers, Department of the Army (Parts 200-399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)

Title 34—Education—Continued

Chap.	Subtitle B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100-199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200-299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400-499)
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)
VI	Office of Postsecondary Education, Department of Education (Parts 600-699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700-799)
VIII	Office of Education for Overseas Dependents, Department of Education (Parts 800-899) [Reserved]

Title 35—Panama Canal

I	Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I	National Park Service, Department of the Interior (Parts 1-199)
II	Forest Service, Department of Agriculture (Parts 200-299)
III	Corps of Engineers, Department of the Army (Parts 300-399)
IV	American Battle Monuments Commission (Parts 400-499)
V	Smithsonian Institution (Parts 500-599)
VII	Library of Congress (Parts 700-799)
VIII	Advisory Council on Historic Preservation (Parts 800-899)
IX	Pennsylvania Avenue Development Corporation (Parts 900-999)
X	Commission of Fine Arts (Parts 1000-1099)
XI	Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)

Title 37—Patents, Trademarks, and Copyrights

I	Patent and Trademark Office, Department of Commerce (Parts 1-199)
II	Copyright Office, Library of Congress (Parts 200-299)
III	Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

Chap.

I Veterans Administration (Parts 0-99)

Title 39—Postal Service

I United States Postal Service (Parts 1-999)

III Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1-799)

IV Low-Emission Vehicle Certification Board (Parts 1400-1499)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE A—Federal Procurement Regulations System

1 Federal Procurement Regulations (Parts 1-1—1-99)

3 Department of Health and Human Services (Parts 3-1—3-99)

4 Department of Agriculture (Parts 4-1—4-99)

5 General Services Administration (Part 5-1—5-99)

5A Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-99)

5B Office of Acquisition Policy, General Services Administration (Parts 5B-1—5B-99)

6 Department of State (Parts 6-1—6-99)

7 Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-99)

8 Veterans Administration (Parts 8-1—8-99)

9 Department of Energy (Parts 9-1—9-99)

10 Department of the Treasury (Parts 10-1—10-99)

12 Department of Transportation (Parts 12-1—12-99)

13 Department of Commerce (Parts 13-1—13-99)

14 Department of the Interior (Parts 14-1—14-99)

14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-99)

14R Office of Water Research and Technology, Department of the Interior (Parts 14R-1—14R-99)

15 Environmental Protection Agency (Parts 15-1—15-99)

18 National Aeronautics and Space Administration (Parts 18-1—18-99)

19 International Communication Agency (Parts 19-1—19-99)

20 Nuclear Regulatory Commission (Parts 20-1—20-99)

22 Community Services Administration (Parts 22-1—22-99)

23 United States Arms Control and Disarmament Agency (Parts 23-1—23-99)

24 Department of Housing and Urban Development (Parts 24-1—24-99)

25 National Science Foundation (Parts 25-1—25-99)

Title 41—Public Contracts and Property Management—Continued

Chap.	
28	Department of Justice (Parts 28-1—28-99)
29	Department of Labor (Parts 29-1—29-99)
34	Department of Education (Parts 34-1—34-99)
44	Federal Emergency Management Agency (Parts 44-1—44-99)
	SUBTITLE B—Other Provisions Relating to Public Contracts
50	Public Contracts, Department of Labor (Parts 50-1—50-999)
51	Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-99)
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1-199)
III	Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Bureau of Reclamation, Department of the Interior (Parts 200-499)
II	Bureau of Land Management, Department of the Interior (Parts 1600-9999)

Title 44—Emergency Management and Assistance

I	Federal Emergency Management Agency (Parts 0-399)
IV	Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

Chap.	
	SUBTITLE A—Department of Health and Human Services (Parts 1-99)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
IV	Office of Refugee Resettlement, Department of Health and Human Services (Parts 400-499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
VI	National Science Foundation (Parts 600-699)
VII	Commission on Civil Rights (Parts 700-799)
VIII	Office of Personnel Management (Parts 800-899)
X	Community Services Administration (Parts 1000-1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100-1199)
XII	ACTION (Parts 1200-1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
XVI	Legal Services Corporation (Parts 1600-1699)
XVII	National Commission on Libraries and Information Science (Parts 1700-1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800-1899)
XIX	National Commission on the Observance of International Women's Year (Parts 1900-1999)
XXI	Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Maritime Administration, Department of Transportation (Parts 200-399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
IV	Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0-199)
II	Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—[Reserved]

Title 49—Transportation

Chap.	
	SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)
	SUBTITLE B—Other Regulations Relating to Transportation
I	Research and Special Programs Administration, Department of Transportation (Parts 100-199)
II	Federal Railroad Administration, Department of Transportation (Parts 200-299)
III	Federal Highway Administration, Department of Transportation (Parts 300-399)
IV	Coast Guard, Department of Transportation (Parts 400-499)
V	National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
VI	Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)
VIII	National Transportation Safety Board (Parts 800-899)
IX	United States Railway Association (Parts 900-999)
X	Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

I	United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
V	Marine Mammal Commission (Parts 500-599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of CFR Titles, Chapters, Subchapters, and Parts

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

Alphabetical List of Agencies Appearing in the CFR

(As of September 30, 1981)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Acquisition Policy, Office of	41, 5A, 5B
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Quality Service	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Inspector General, Office of	7, XXVI
Operations and Finance, Office of	7, XXX
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Statistical Reporting Service	7, XII
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII

Agency	CFR Title, Subtitle or Chapter
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Chrysler Corporation Loan Guarantee Board	13, IV
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Defense	44, IV
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Council on Wage and Price Stability	6, VII
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III

Agency	CFR Title, Subtitle or Chapter
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Procurement Regulations System	41, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Energy Regulatory Commission	18, I
Federal Procurement Regulations System	41, 9
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22,XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A
Federal Property Management Regulations	41, 101

Agency	CFR Title, Subtitle or Chapter
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Quality Service,	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
Public Health Service	42, I
Refugee Resettlement Office	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Interstate Land Sales Registration, Office of	24, IX
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	24, XX
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Solar Energy and Energy Conservation Bank	24, X

Agency	CFR Title, Subtitle or Chapter
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water Research and Technology, Office of	41, 14R
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Development Cooperation Agency	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Interstate Land Sales Registration, Office of	24, IX
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII

Agency	CFR Title, Subtitle or Chapter
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Worker's Compensation Programs, Office of	20, I
Labor Management Relations, Office of Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Science Foundation	45, VI; 41, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	29, XX
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III

Agency	CFR Title, Subtitle or Chapter
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement Office	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Federal Procurement Regulations System	41, 6
Statistical Reporting Service, Agriculture Department	7, XII
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
Maritime Administration	46, II
National Defense	44, IV
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Administration, Assistant Secretary for	6, VI
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II

Agency	CFR Title, Subtitle or Chapter
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Research and Technology, Office of	41, 14R
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

Redesignation Table 1

At 44 FR 31177, May 31, 1979, the existing regulations of the Federal Insurance Administration, set forth in 24 CFR Chapter X, were redesignated and transferred to Title 44, Chapter I, Subchapter B. The following redeisgnation table shows the relationship between the Title 24 regulations and the redesignated parts reflected in Title 44:

Old Part 24 CFR	New Part 44 CFR
[Reserved]	50-54
1905	55
1906	56
1907	57
1908 [Reserved]	58
1909	59
1910	60
1911	61
1912	62
1913 [Reserved]	63
1914	64
1915	65
1916	66
1917	67
1918	68
1919 [Reserved]	69
1920	70
1921-1924 [Reserved]	71-74
1925	75
1926-1929 [Reserved]	76-79
1930	80
1931	81
1932	82
1933	83
1934	84
[Reserved]	85-149

BLANK PAGE

Redesignation Table 2

At 44 FR 56172, Sept. 28, 1979, the existing regulations of the United States Fire Administration, set forth in 45 CFR Chapter XX, were redesignated and tranferred to Title 44, Chapter I, Subchapter C. The following redesignation table shows the relationship between the Title 45 regulations and the redesignated parts reflected in Title 44:

Old Part 45 CFR	New Part 44 CFR
2000	150
2010	151

BLANK PAGE

Redesignation Table 3

At 44 FR 56172, Sept. 28, 1979, the existing regulations of the Federal Disaster Assistance Administration, set forth in 24 CFR Chapter XIII, were redesignated and transferred to Title 44, Chapter I, Subchapter D. The following redesignation table shows the relationship between the Title 24 regulations and the redesignated parts reflected in Title 44:

Old Part 24 CFR	New Part 44 CFR
2200	200
2201	201
2205	205

BLANK PAGE

Redesignation Table 4

At 44 FR 56173, Sept. 28, 1979, the existing regulations of the Defense Civil Preparedness Agency, set forth in 32 CFR Chapter XVIII, were redesignated and transferred to Title 44, Chapter I, Subchapter E. The following redesignation table shows the relationship between the Title 32 regulations and the redesignated parts reflected in Title 44:

Old Part 32 CFR	New Part 44 CFR
[Reserved]	300
1801	301
1807	302
1803	303
1804	304
1809	305
1806	306
1811	307
1808	308
1812	309
1800	310

BLANK PAGE

Redesignation Table 5

At 45 FR 44574-44575, July 1, 1980, the existing regulations of the Federal Preparedness Agency, set forth in 32A CFR Chapter I, were redesignated and transferred to Title 44, Chapters I and IV. For amendments affecting Title 32A, see the "List of CFR Sections Affected" appearing in the Finding Aids section of the 1979 volume. The following redesignation table shows the relationship between Title 32A regulations and the redesignated parts reflected in Title 44:

Old Part 32A CFR	New Part 44 CFR
101	320
102	321
103	322
104	323
105	324
106	325
107	326
110	327
111	328
112	329
113	330
134	331
165	7
701	401
701a	402
702	403

BLANK PAGE

Table 1—Regulations Formerly Appearing in Title 44, Public Property and Works

Title 44, designated Public Property and Works, was in existence until 1973. At 38 FR 27049, Sept. 28, 1973, Title 44 was vacated and existing regulations were transferred to other titles of the CFR.

All sections in the former Title 44 of the Code of Federal Regulations which were affected by documents published in the Federal Register since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes. rate volumes.

1973

44 CFR	38 FR Page
Removed; provisions transferred to 22 CFR Part 133 and 36 CFR Ch. VII (Parts 701 and 702)	27049
Chapter IV	
Chapter removed; provisions of Part 401 transferred to 15 CFR Part 302	12743

BLANK PAGE

500

Table 2—Regulations Transferred to Title 44, Emergency Management and Assistance

Note: Regulations formerly issued by the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the Federal Emergency Management Agency at 44 FR 31177, May 31, 1979. The following list contains all changes since April 1, 1973, to the regulations formerly codified in 24 CFR Chapter X (Parts 1905-1934) prior to transfer to 44 CFR Chapter I, Subchapter B (Parts 55-84). For the period before January 1, 1973, see the List of CFR Sections Affected, 1949-1963 and 1964-1972, published in three separate volumes. For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

1973

(Regulations published from January 1 through March 31, 1973)

24 CFR

38 FR Page

Chapter X

1910.3 (a) introductory text revised....................1001
1910.4 (a) introductory text revised....................1001
1914.3 Revised....................1001
1914.4 Amended....................859, 1390, 1391, 1740, 3404, 3405, 3581, 3582, 4663, 4953, 5461, 6667, 6992, 7224, 7550, 8269
1915.3 Table revised....................1002
Amended....................1391, 1392, 3583, 4669, 4954, 5462, 6679, 7225, 7551, 8271
1930.6 Amended....................4508
1931.1 (b) revised....................4508
1932.31 (a) revised....................4508
1934.2 (b) amended....................3314

1973–1974

(Regulations published from April 1, 1973 through March 31, 1974)

24 CFR

38 (39*) FR Page

Chapter X

1909.1 Amended....................*1980
1909.3 Amended....................*1980
1911.1 Revised....................*1980
1911.6 Revised....................*1980
1911.8 (a) and (b) revised....................*1980
1911.9 (a) revised....................*1981

24 CFR—Continued

38 (39*) FR Page

Chapter X—Continued

1911.11 Added....................*1981
1913 Removed....................*1981
1914.4 Table amended....................8431, 8432, 8740, 8741, 9014, 9015, 9085, 9086, 9162, 9163, 9491, 9492, 9666, 10268-10270, 10928, 11081-11084, 12108, 12317-12319, 12603, 12739, 12740, 12914, 12915, 13015, 13374, 13560, 13644, 13645, 13647, 13736, 14094, 14371, 14679, 14680, 14921, 15073, 15505, 15624, 15957, 15958, 16221, 16222, 16862-16864, 17001, 17002, 17440, 17718, 18236, 18237, 18547, 18653, 18877, 19220, 19684, 19685, 20072, 20320, 20616, 21180, 21264, 21402, 21743-21745, 21998, 22123, 22227, 22471, 22773-22775, 22893, 23943-23945, 24355-24357, 25677, 25678, 25994, 26113, 26114, 26367, 26911, 27216, 27217, 27387, 27611, 28032, 28033, 28821-28823, 29227, 29579, 29580, 29880, 30440, 30441, 30552, 31173, 31509-31511, 31968-31970, 32922-32924, 33465, 33466, 33767, 33768, 34189, 34656, 34657, 34999, 35000, 35455

Note: Asterisk (*) refers to 1974 page numbers.

24 CFR—Continued

38 (39*) FR Page

Chapter X—Continued

1914.4 Table amended.................*1429, 1430, 1981-1983, 2359, 2360, 2599, 4090, 4091, 4877-4879, 5767-5770, 6517, 7168, 7170, 7932, 9174-9176, 9832-9835, 9920, 11181-11183, 11259

1915.3 Table amended...................9016, 9086, 9492, 10271, 11084, 12109, 12916, 13646, 15073, 15625, 16864-16866, 17719, 18237, 18654, 19221, 20073, 20321, 21745, 21999, 22776, 24358, 24360, 26368, 27217, 27611, 28034, 28824, 28825, 29228, 29580 30441, 31009, 31971, 32790, 32924, 33647, 34326, 34657, 35456

1915.3 Table amended...*1431, 1984, 2600, 2758, 4092, 4097, 5496, 6050, 7171, 7933, 9921, 11183, 11259

1930.6 Amended.............................10080

Revised...19685

1931.1 (b) revised...........................10080

(b) revised.............................*2361, 4104

1932.3a Added.................................19686

(b) revised...30444

1932.3b Added.................................19686

1932.3c Added.................................19686

1932.4 Revised.................................19686

1933.3 Revised.................................*2361

1933.23 Revised...............................*2361

1933.25a Added...............................19687

Revised...30444

1933.26 Introductory text revised; (a) removed.......................10687

1934.2 Amended..............................*6607

1974–1975

(Regulations published from April 1, 1974 through March 31, 1975)

24 CFR

39 (40Δ) FR Page

Chapter X

1914.4 Table amended.................11894, 12007, 12339-12341, 12862, 12863, 13633-13638, 14197-14199, 14599, 14600, 15100, 15101, 15870-15872, 16468, 17513-17515, 18095-18098, 19451-19453, 20059, 20060, 20486-20488, 21136, 22117-22119, 23056, 23057, 24232, 24233, 24633-24635, 25648, 26422, 26903, 28152, 28153, 28154, 28422, 28423, 28532, 28533, 29176, 29595, 29596, 30035-30037, 31310, 31311, 31519, 31520, 32881-32884, 33511, 33680-33681, 34034, 34035, 34663, 35159, 35160, 35654-35656, 36333, 36334, 36585, 37361, 37362, 37475, 37476, 38382, 38383, 38384, 39443, 39557, 39558, 40158-40160, 40567, 40568, 40852, 40853, 41360, 41361, 41708, 42911-42915, 43079, 43299, 43392, 43833, 43834, 44199, 44200, 44747

Table amended.............................Δ 766, 767, 2180 (Jan. 10), 2181 (Jan. 10), 2424, 2425, 3585, 3586, 3770-3772, 3983-3985, 4909, 4910, 5148, 6781-6785, 7922-7924, 8334, 8562-8565, 10969, 10970, 11572-11574, 12488-12491, 12642, 14001-14068

1915.3 Table amended.................11895, 13145, 13639, 14601, 15102, 15873, 15874, 17515, 19454, 20686, 21137, 22120, 23263, 24635, 24639, 25648, 28235-28275, 28424, 28887, 31311, 31520, 32329, 32885, 32892, 34269, 34277, 34524, 35160, 36961, 37639, 38626, 39265, 39266, 39443, 40016, 40017, 40568, 40286, 41503, 41509, 41510, 42679, 42680, 42681, 43080, 43298, 43299, 43300, 43392, 43720, 44393, 45216

Table amended ....Δ 767, 776, 2182 (Jan. 10), 2191, 2200-2203, 2425, 2452, 3586, 3773, 3985, 4125, 4651, 4652, 5149, 5151, 6957, 6964, 8334, 8807, 8811, 10971, 11575, 12643, 14306

Corrected.................................Δ 7647, 7648

1916 Added..26904

1917 Added..26905

1918 Added..26906

1930.6 Amended..............................14699

1932.31 (d) revised.........................14949

NOTE: Asterisk (*) refers to 1974 page numbers.

NOTE: Symbol (Δ) refers to 1975 page numbers.

24 CFR—Continued

39 (40Δ) FR Page

Chapter XIII

2200.11 (d) added.......................... Δ 4652
2205 Added.....................................28212
Effective date added..................Δ 5507
2205.75—2205.79 (Subpart G)
Added.. 40161

1975–1976

(Regulations published from April 1,
1975 through March 31, 1976)

24 CFR

40 (41†) FR Page

Chapter X

1909.1 Amended............................ 23865
Amended.................................... †12680
1909.3 Revised.............................. †1062
1912.2 (e) revised..........................57210
(e) revised.....................................†1063
1912.5 Added...................................57210
Corrected...................................... †1063
1912.22 Revised............................ 57212
1914.1 Revised.............................. †1062
1914.4 Table amended.................14600,
14601, 16834-16841, 17751,
17752, 17753, 17838, 17839,
17988, 18776, 18777, 18994,
20617-20624, 20794, 20795,
23726-23731, 23866-23873,
23977, 23978, 25003, 25465,
25586, 25589, 25590, 26992,
26995, 27000, 27215, 27481,
28062, 29819, 29820, 29821,
29822, 30111, 30112, 30942,
30943, 30944, 31212-31216,
33011, 33448, 34600, 36319,
36320, 38152, 38153, 39861,
39862, 41509, 42009, 42873,
43219, 43721, 45805, 48356,
48357, 48504, 48677, 49314,
51046, 51627, 53573, 55355,
56671, 57804, 59343, 59344
Table amended............................†1471,
1751, 1893, 4819, 4820, 4822,
5089, 6250, 7759, 9151, 9152,
11287, 12681, 12892, 12894
1915 Heading and contents
table revised............................ †1472
1915.1 Revised.............................. 56672
1915.2 Revised.............................. 53579
1915.3 Table amended.................14754,
16192, 16193, 16303, 16304,
16842, 17017, 17989, 18550,
19641, 19642, 20271, 20272,

24 CFR—Continued

40 (41†) FR Page

Chapter X—Continued

27273, 20799, 20803, 20808,
23460-23465, 23980, 23982,
24183, 24722, 25206, 25207,
25468, 25471, 27001, 27004,
27005, 27006, 27007, 27216,
27217, 27652, 29823, 29824,
31217, 31220, 33670, 33674,
33821, 36321, 36562, 41511,
42554, 42874, 43221, 43722,
45807, 48505, 49315, 51047,
51628, 53575, 55357, 56910,
59428
Table amended............................†1277,
1752, 2241, 3085, 4901, 6727,
7761, 8178, 9356, 11485, 12885,
13340, 13346
1915.4 Added.................................†1472
1915.5 Added...............................†13351
1915.6 Added..................................17016
Table amended..... 20798, 46103, 53579
Revised............................ 53579, 56672
Revised.................... †1478, 5090, 13351
1916 Interpretation...................... 23278,
23279, 24521, 29824, 29825,
34122, 39499, 42348, 42349,
43027, 45165, 45166, 48126,
53008, 53009, 56426
1916 Interpretation...................... †1277,
1280, 4527, 4823, 4824, 6739,
6740, 7406, 8950, 8951, 10431,
11019, 12682-12684, 13604,
13605
1917 Determinations...................34123,
34124, 34125, 34126, 34127,
41108-41115, 42349, 48127,
48128, 50713, 50714, 51442,
53010, 54778, 56426, 57668
Determinations.......................... †1895-
1898, 2645, 4528-4531, 4914,
6067, 7406, 7407, 9153, 11181-
11186, 11491, 11819, 12224,
12225, 12685, 13605, 13606
1920 Added....................................23865
Map amendments....................... 33210,
33211, 33212, 33213, 36117,
36118, 37208, 37209, 39500,
39501, 39502, 39503, 41115,
41116, 42557, 42743, 45166,
45167, 48128-48133, 48357,
48358, 48359, 49089, 50532-
50536, 50714, 51632-51635,
52362-52367, 53010, 53011,

NOTE: Symbol (Δ) refers to 1975 page numbers.
NOTE: Symbol (†) refers to 1976 page numbers.

24 CFR—Continued

40 (41†) FR Page

Chapter X—Continued

54778, 54779, 56427-56429, 57669, 57670, 59199-59203,

Map amendments.......................†2645, 2646, 4256, 4531-4536, 4825, 4826, 4915-4917, 8951-8954, 9153, 10216, 10217, 11819, 12225-12227, 12685-12687, 13607-13611

1930.6 Revised..............................44130

1931.1 (b) revised..........................44130

1976–1977

(Regulations published April 1, 1976
through March 31, 1977)

24 CFR

41 (42*) FR Page

Chapter X

1905.13 Added..............................56794

Revised; eff. 4-15-77.................... *3163

1909 Revised................................. 46969

1910 Revised................................. 46975

1911 Revised................................:. 46981

1912 Revised................................. 46984

1912.7 Revised.............................. 56307

1914 Revised...................... 39022, 46986

1914.4 Table amended................14756, 15700, 16645, 17539, 17723, 17725, 18653, 20397-20399, 21187, 21325, 22277, 22949, 23950, 24584, 24585, 29141, 29142, 29820, 30121, 30649, 31198, 31199, 32217, 32739, 33551, 33552, 34943, 35707, 36492, 37315, 38948

1914.6 Table amended................41082, 43402, 43716, 43717, 44383, 44999, 45000, 45986, 47232, 49629, 49630, 49812, 49813, 50643, 51597, 51598, 53004, 53479, 56750-56752

Table amended............................ *2193, 4264, 6574, 6575, 8102-8104, 8853, 9510, 12382, 16134, 16618, 17083

1915 Revised.................................. 46987

1915.3 Table amended................14751, 16646, 17539, 17540, 17914, 18851, 20549, 20556, 21326, 23188, 28960, 29396, 29822, 29841, 31200, 33911, 35709, 38499, 45548, 49814, 53665

Table amended.................. *8105, 8857

24 CFR—Continued

41 (42*) FR Page

Chapter X—Continued

1915.4 Revised.............................. 26402

Revised..*9110

1915.6 Revised.............................. 17725

Revised..*8895

1916 Determinations...................14368, 16147, 16654, 16655, 17540-17542, 18509, 18510, 20162, 20571, 21187-21189, 22815, 30650, 32584-32587, 32739, 33253-33255, 33919-33921, 35844-35847, 37112-37114, 37574, 37375, 39024, 39740, 43140, 44036, 44037, 46587, 46852, 47033, 49973, 49974, 52868, 52869, 56309-56313

Revised.. 46988

1916 Determinations.................. *4264, 4265, 8516, 8517, 15902, 16384, 16619, 16620

1917 Appeals from determinations.............................. 14509-14513, 14862, 17382, 17383, 17542, 22950, 22951, 23382-23384, 30015-30017, 30122-30133, 30650-30653, 33255-33260, 33553-33556, 34022-34025, 34944-34948, 35063-35066, 35481-35489, 35712-35715, , 37316, 37776-37780, 38503-38504, 38768, 39025-39027, 39741, 39742, 40462-40464, 43141, 44383-44391, 44162-44169, 45000, 46303-46314, 46588-46597, 47033-47045, 48101-48110, 48337-48342, 48535-48538, 48733-48735, 49093, 49094, 49974-49980, 50245-50257, 50400-50411, 50629-50642, 51792-51794, 52668, 52669, 52870-52876, 53320, 53984-53991, 54486, 54487, 55084-55095, 56752-56754, 56946-56959

Revised 46989

Appeals from determinations...*2063-2069, 4265-4268, 8272-8289, 8517-8530, 9511, 9518, 9806, 9810, 15820-15840, 16096-16105, 16236-16252, 16592, 16593, 16726-16732, 17276-17292

1918 Revised................................. 46990

1920 Map amendments.............. 14757, 14758, 17383-17386, 17543-17546, 20571-20575, 22036-

---

Note: Symbol (†) refers to 1976 page numbers.

Note: Symbol (*) refers to 1977 page numbers.

24 CFR—Continued

41 (42*) FR Page

Chapter X—Continued

22039, 24347-24349, 29667-29672, 30017-30021, 33261, 33262, 34611-34618, 35172-35174, 35847, 40101-40103, 40464, 40465, 45829-45841, 49980-49982, 52451, 52452, 53991, 54171-54176

Revised.. 46991

Map amendments.............*8289-8302, 15903-15908

1925 Added.....................................46992

1930.6 Revised.................... 34618, 56314

1931.1 (b) revised...............34618, 56314

1977–1978

(Regulations published from April 1, 1977 through March 31, 1978)

24 CFR

42 (43†) FR Page

Chapter X

1909.1 Amended........................... †7140

1909.2 (a) revised...........................†7140

1909.3 Revised.............................. †7140

1909.4 (a)(5) and (b)(1) revised; (b)(12), (13), and (14) added.... †7140

1911 Revised.................................. †2570

1912 Revised.................................. †2573

1912.7 Revised.............................. 43975

Corrected.. 46924

1914.1 (b) revised...........................†7141

1914.6 Table amended................ 19446-19448, 19451, 19452, 19598-19600, 20122, 22866-22868, 24932, 24938, 29428-29431, 30304, 31254, 31257, 33202, 37810, 42313-42318, 43833, 46488, 46489, 47014, 47015, 49584, 51776, 51777, 55866, 55867, 57046, 57048, 59002, 59959, 59960, 60871, 61452, 64075, 64117

Table amended...†3091, 3260, 5805, 11182, 11184, 12676

1915.3 Table amended.................19601, 19604, 24945, 24087, 30306, 42795, 46157, 55869, 59003, 61545

Table amended.................†3093, 11185

1915.4 Revised.............................. 33203

Revised.. †6070

1915.6 Revised....... 29433, 46225, 64076

Table corrected........................... 49811

24 CFR—Continued

42 (43†) FR Page

Chapter X—Continued

1915.7 Added.................................38524

Revised.. 44234

Table amended.................45635, 59961

Revised.. 64068

1916 Determinations...................29307, 30344, 38064, 38055, 46490-46492, 47016, 51777-51779, 62365, 62367

Determinations.... †3262, 10906, 11194

1917 Appeals from determinations.............................. 23972-23975, 25436-25440, 31259-31271, 33476-33495, 36400, 36401, 36622-36639, 36936-36952, 38066, 38067, 38286-38296, 43542-43550, 43906-43913, 44662-44664, 45120, 45636-45641, 46004-46012, 46232, 46233, 48508-48516, 48996-49004, 51779-51788, 52726-52735, 56036-56046, 57408-57414, 57852-57859, 58008-58016, 58494-58503, 59196, 60886-60878, 61010-61018, 61804, 63708-63719, 63870-63880, 64068-64075

Appeals from determinations ....†2062-2082, 2286-2300, 3264-3269, 5807-5816, 6075-6090, 6218-6226, 6581-6602, 10906, 11488-11498

1920 Map amendments....24256-24263, 24725-24731, 28878-28882, 29859-29870, 30160-30174, 44368, 44373, 46682-46696, 47017-47023, 52735-52747, 53742-53752, 56046-56048, 56226-56234, 58503-58507, 61805, 63340, 63441, 64078, 64079

Map amendments ....†3270-3274, 10907, 10908

1920.7 Revised.............................. 56953

1925.14 Revised............................ †7141

1930.6 Revised.............................. 29480

1931.1 (b) revised..........................29480

1931.2 (a)(2) removed; (a)(3) through (5) redesignated as (a)(2) through (4)..................... †4008

1931.7 (c) revised.......................... †4008

1932.3a—1932.3c Removed.......... †4008

1932.4 Revised.............................. †4009

1932.5 Added.................................. †4008

NOTE: Symbol (*) refers to 1977 page numbers.

NOTE: Symbol (†) refers to 1978 page numbers.

1978–1979

(Regulations published from April 1, 1978 through March 31, 1979)

24 CFR

43 (44Δ) FR Page

Chapter X

1911.11 Revised.............................. 50427

1914.6 Table amended.................16313, 16314, 18671, 24012, 24014, 26285, 26288, 27788, 27987, 32751, 33239, 36066, 36901, 38689, 41029, 41031, 41967, 42743, 42748, 46848, 46967, 47725, 50875, 51014, 51616

Table amended.............................Δ 793, 2572, 2574, 4469, 6381, 6905, 7657–7659, 10060, 10710, 10712, 12176, 12178, 12179, 13475, 16375, 17661, 18484, 18485

1915.3 Table amended.................24023, 27792, 36906, 38697, 41968, 50880

Table amended.............................Δ 796, 802, 7133, 10713, 17662

1915.6 Revised.............................. 24019

Table revised.............................. 24020

Revised.. 38692

Revised..Δ 815

Table amended.............................Δ 816

Revised.......................... Δ 6384, 18485,

Table amended.........................Δ 18486

1915.7 Table amended.................. 16316

Revised.. 24022

1915.8 Added...................... 36241–36244

Table amended...Δ 5079, 6382, 6909, 13477

1915.9 Added..................................Δ 5079

Table amended Δ6383, 6907, 10712, 12996

1916 Determinations 24049, 24050, 39572, 46970

1917 Appeals from determinations............................ 16316–16336, 16450–16477, 16715–16734, 22010–22029, 22177–22210, 22346–22355, 22677–22706, 22939–22969, 23714–23722, 24051–24061, 24289–24308, 24520–24523, 24525–24527, 26290, 26291, 26293–26309, 26429–26441, 26709–26718, 27181–27186, 27518–27530, 28180–28184, 28460–28466, 31891–31896, 31899–31911, 35267–35278, 39352–39361,

24 CFR—Continued

43 (44Δ) FR Page

Chapter X—Continued

39573–39582, 39761–39771, 39983–39987, 41204, 45558–45581, 50888–50903, 51387, 51617–51628

Appeals from determinations..... Δ 841 870, 1976, 1977, 3037–3048, 3262–3273, 3480–3490, 5080, 5082–5115, 5393–5400, 5406–5419, 6387, 6388, 7660–7694, 8261, 8262, 11756–11758, 12180–12191, 12427, 12646–12668, 12996–13007, 15667–15697, 18191–18221, 18488, 18489

1920 Map amendments...............16169–16174, 24675–24691, 28186–28198, 35916–35920, 39772–39774

Map amendments..........Δ 16377–16384

1930.6 Revised.................... 27186, 50428

1931.1 (b) revised...16337, 27187, 50428

(b) revised................................. Δ 12669

1979

(Regulations published from April 2, through September 28, 1979)

24 CFR

44 FR Page

Chapter X

Chapter X Removed; regulations transferred to 44 CFR Chapter I, Subchapter B..................33065

1905 Redesignated as 44 CFR Part 55.......................................31177

1906 Redesignated as 44 CFR Part 56.......................................31177

1907 Redesignated as 44 CFR Part 57.......................................31177

1909 Redesignated as 44 CFR Part 59.......................................31177

1910 Redesignated as 44 CFR Part 60.......................................31177

1911 Redesignated as 44 CFR Part 61.......................................31177

Appendixes A and B correctly added... 32215

Appendix A amended................. 32215

1912 Redesignated as 44 CFR Part 62.......................................31177

1914 Redesignated as 44 CFR Part 64.......................................31177

1914.6 Table amended................19398, 20093, 21770, 23214, 23217, 25204, 25632, 26868, 27074, 27983, 29871, 29872, 30683,

---

NOTE: Symbol (Δ) refers to 1979 page numbers.

24 CFR—Continued

44 FR Page

Chapter X—Continued

31973, 32655, 32656, 34120, 35213

1915 Redesignated as 44 CFR Part 65....31177

1915.3 Table amended 25634, 27075, 35214

1915.6 Revised 25636, 28793, 34120

Table amended 25637, 28793, 34121

1915.8 Table amended 21630, 28324, 36384

1915.9 Table amended 19400, 27984, 33397

1916 Redesignated as 44 CFR Part 66....31177

1917 Appeals from determinations corrected 19400, 20163, 23519, 27387

Appeals from determinations 20155-20162, 20405-20412, 20414-20416, 21631-21643, 21770-21785, 25205-25216, 25436-25446, 25637-25647, 27386-27391, 29452, 29655-29666, 29874-29885, 29887-29870, 30085-30094, 31011, 33065, 33066, 34122-34124

24 CFR—Continued

44 FR Page

Chapter X—Continued

Redesignated as 44 CFR Part 67....31177

1918 Redesignated as 44 CFR Part 68....31177

1920 Map amendments...24055-24058, 27654-27656

Redesignated as 44 CFR Part 70....31177

1925 Redesignated as 44 CFR Part 75....31177

1930 Redesignated as 44 CFR Part 80....31177

1931 Redesignated as 44 CFR Part 81....31177

1931.1 (b) revised....36028

1932 Redesignated as 44 CFR Part 82....31177

1933 Redesignated as 44 CFR Part 83....31177

1934 Redesignated as 44 CFR Part 84....31177

BLANK PAGE

508

Title 24, Chapter XII—Federal Disaster Assistance Administration

Note: Regulations formerly issued by the Federal Disaster Assistance Administration, Department of Housing and Urban Development, were transferred to the Federal Emergency Management Agency at 44 FR 56172, September 28, 1979. The following list contains all changes since February 22, 1974, to the regulations formerly codified in 24 CFR Chapter XIII (Parts 2200—2205) prior to transfer to 44 CFR Chapter I, Subchapter D (Parts 200-205). For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

1974

(Regulations published from February 22, through March 31, 1974)

24 CFR Chapter XIII	39 FR Page
Chapter established	6697
2200 Added (provisions derived from 32 CFR Part 1709)	6697
Effective date corrected	9541
2200.2 (w) added	9651
2200.3 (d) added	9651
2200.32 Amended	9651
2200.38—2200.39 (Subpart E) Added	9651
2201 Added (provisions derived from 32 CFR Part 1710)	6705
Effective date corrected	9541

1974–1975

(Regulations published from April 1, 1974 through March 31, 1975)

24 CFR Chapter XIII	39 (40*) FR Page
2200.11 (d) added	*4652
2205 Added	28212
Effective date added	*5507
2205.75—2205.79 (Subpart G) Added	40161

Note: Symbol (*) refers to 1975 page numbers.

1975–1976

(Regulations published from April 1, 1975 through March 31, 1976)

24 CFR Chapter XIII	40 FR Page
2205 Revised	23253
2205.7 (g) corrected	28609
2205.48 (c)(1)(C)(1) and (2) redesignated (ii) and (iii); (d) amended; (h)(A) redesignated (2)	28609
(c)(1)(i)(D) added	58450
2205.51 Corrected	28609
2205.54 (h)(A), (A)(1), (B), (C), and (D) redesignated (h)(2), (2)(i), (ii), (iii), and (iv); (a)(3)(ii), and (v) and (h) corrected	28609
2205.73 Corrected	28609
2205.78 (a) corrected	28609
2205.79 (c)(2) corrected	28609

1976–1977

(Regulations published from April 1, 1976 through March 31, 1977)

24 CFR Chapter XIII	41 FR Page
2205.48 (h)(3) revised	48538
2205.55 (d) revised	14758
2205.62 (c) revised	14758
2205.80—2205.83 (Subpart H) Added	32359

Title 24—Federal Disaster Assistance Administration

1977–1978

(Regulations published from April 1, 1977 through March 31, 1978)

24 CFR

42 (43†) FR Page

Chapter XIII

2205.45 Revised; eff. 4-3-78......... †8765
2205.46 Removed; eff. 4-3-78...... †8768
2205.48 Revised............................. 35644
(c)(1) amended............................. †4256

1978–1979

(Regulations published from April 1, 1978 through March 31, 1979)

24 CFR

43 (44Δ) FR Page

Chapter XIII

2205.46 Added................................19230
2205.48 (c)(1)(i), (ii), and (iii) revised... 22030

Note: Symbol (†) refers to 1978 page numbers.

24 CFR—Continued

43 (44Δ) FR Page

Chapter XIII—Continued

2205.54 (h)(1) introductory text and (i) through (iv), (i), (j), and (k) redesignated as (h) introductory text and (1) through (4), (j), (k), and (l); (h)(2) redesignated as (i) and revised.. 18992

1979

(Regulations published from April 2, through September 28, 1979)

24 CFR

44 FR Page

Chapter XIII

Chapter XIII Removed and regulations transferred to 44 CFR Chapter I, Subchapter D.........56172
2200 Redesignated as 44 CFR Part 200......................................56172
2201 Redesignated as 44 CFR Part 201......................................56172
2205 Redesignated as 44 CFR Part 205......................................56172

Note: Symbol (Δ) refers to 1979 page numbers.

Title 32, Chapter XVIII—Defense Civil Preparedness Agency

NOTE: Regulations formerly issued by the Defense Civil Preparedness Agency, Department of Defense, were transferred to the Federal Emergency Management Agency at 44 FR 56173, September 28, 1979. The following list contains all changes since January 1, 1973, to the regulations formerly codified in 32 CFR Chapter XVIII (Parts 1800—1814) prior to transfer to 44 CFR Chapter I, Subchapter E (Parts 300—310). For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

1973

(Regulations published from January 1 through June 30, 1973)

32 CFR

Chapter XVIII	38 FR Page
1800 Removed	16775
1804 Removed	16775
1812 Revised	16775

1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

32 CFR

Chapter XVIII	38 FR Page
1808.3 Removed; new 1808.3 added	31526
1812.1 Amended	28660
1812.2 Revised	28660
1812.3 Amended	18372
1812.16 Revised	28660

1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

32 CFR

Chapter XVIII	39 (40*) FR Page
1803 Revised	*16314
1805 Removed	41709

32 CFR—Continued

Chapter XVIII—Continued	39 (40*) FR Page
1810.4 (a) amended	*27446
1811 Revised	*3212
1811.2 (a) revised	*6205
1813 Revised	*10457

1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

32 CFR

Chapter XVIII	40 (41) FR Page
1801.7 Revised	36328
1801.9 (a) amended	30114
1807.9 (b) amended	30114
1808.1 Amended	42736
1808.3 (a) revised	42736
1808.4 Revised	42736
1808.5 Revised	42738
1808.6 (a)(2) revised	42738
1808.7 Revised	42738
1812.13 Amended	30114
1814 Added	46056

NOTE: Symbol (*) refers to 1975 page numbers.

1976–1977

(Regulations published from July 1, 1976 through June 30, 1977)

(No regulations issued)

1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

32 CFR	42 (43†) FR Page
Chapter XVIII	
1800 Added	34878
1801.2 Revised	†25093
1801.3 Revised	†25093
1801.4 Revised	†25093
1801.5 Removed	†25094
1801.6 Revised	†25094
1801.7 Amended	†25094
1801.8 Revised	†25094
1801.9 Revised	†25094
1801.10 Removed	†25094
1801.11 (a) amended	†25094
1802 Removed	†6229
1806 Revised	†26568

1978–1979

(Regulations published from July 1, 1978 through June 30, 1979)

32 CFR	43 (44Δ) FR Page
Chapter XVIII	
1804 Added	39777

NOTE: Symbol (†) refers to 1978 page numbers.

1979

(Regulations published from July 2 through September 28, 1979)

32 CFR	44 FR Page
Chapter XVIII	
Chapter XVIII Removed and regulations transferred to 44 CFR Chapter I, Subchapter E	56173
1800 Redesignated as 44 CFR Part 310 and amended	56173
1801 Redesignated as 44 CFR Part 301	56173
1803 Redesignated as 44 CFR Part 303	56173
1804 Redesignated as 44 CFR Part 304	56173
1806 Redesignated as 44 CFR Part 306	56173
1807 Redesignated as 44 CFR Part 302	56173
1808 Redesignated as 44 CFR Part 308	56173
1809 Redesignated as 44 CFR Part 305	56173
1810 Removed	39390
1811 Redesignated as 44 CFR Part 307	56173
1812 Redesignated as 44 CFR Part 309	56173
1813 Removed	56173
1814 Removed	56173

Title 45, Chapter XX—United States Fire Administration

Note: Regulations formerly issued by the United States Fire Administration, Department of Commerce, were transferred to the Federal Emergency Management Agency at 44 FR 56172, September 28, 1979. The following list contains all changes since July 18, 1977, to the regulations formerly codified in 45 CFR Chapter XX (Parts 2000—2012) prior to transfer to 44 CFR Chapter I, Subchapter C (Parts 150—151). For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

1977

(Regulations published from July 18 through December 31, 1977)

45 CFR	42 FR Page
Chapter XX	
Chapter established	36954
2000 Added; eff. 1-1-78	52402
2010 Added	36954
Technical corrections	37814
2010.02 Corrected	37814
2010.11 (j) revised	37814
2010.13 (a) corrected	37814

1978

(No regulations issued)

1979

(Regulations published through September 28, 1979)

45 CFR	44 FR Page
Chapter XX	
Chapter XX Heading revised	2099
Chapter XX Removed and regulations transferred to 44 CFR Chapter I, Subchapter C	56172
2000 Redesignated as 44 CFR Part 150	56172
2010 Redesignated as 44 CFR Part 151	56172
2012 Added	2099
Removed	56172

BLANK PAGE

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since Title 44 was established at 44 FR 25797, May 2, 1979, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

NOTE: For amendments affecting Title 32A, see the "List of CFR Sections Affected" appearing in the Finding Aids section of the 1979 volume.

1979

(Regulations published from May 2 through Sept. 28, 1979)

44 CFR

44 FR Page

Title established....25797

Chapter I

Chapter established....25797

0-49 (Subchapter A) Heading added....25797

0 Heading added....50276

2 Heading added....50276

3 Added....50276

3.88 Corrected....55876

4 Heading added....50276

5 Added....50287

6 Added....50293

7 Heading added....50276

8 Heading added....50276

9 Heading added....50276

10 Heading added....50276

55—84 (Subchapter B) Heading added....25797

Nomenclature changes....31177

Regulations transferred from 24 CFR Chapter X....33065

55 Redesignated from 24 CFR Part 1905....31177

56 Redesignated from 24 CFR Part 1906....31177

57 Redesignated from 24 CFR Part 1907....31177

59 Redesignated from 24 CFR Part 1909....31177

60 Redesignated from 24 CFR Part 1910....31177

44 CFR—Continued

44 FR Page

Chapter I—Continued

61 Redesignated from 24 CFR Part 1911....31177

62 Redesignated from 24 CFR Part 1912....31177

64 Redesignated from 24 CFR Part 1914....31177

64.6 Table amended....37612, 37613, 37934, 40293, 42690, 45134, 45387, 48221, 48223, 49250, 51594, 54483, 55007

65 Redesignated from 24 CFR Part 1915....31177

65.3 Table amended...40291, 45390, 49253, 53164

Table corrected....55572

65.6 Revised....45389, 52836

Table amended....45389, 52836

65.8 Table amended....45136

65.9 Table amended...45137, 48224, 55011, 55877

66 Redesignated from 24 CFR Part 1916....31177

67 Redesignated from 24 CFR Part 1917....31177

Flood elevation determinations....37614, 37615, 39165-39175, 39394-39403, 40294-40310, 40506-40515, 41439-41459, 41796-41805, 44847, 44848, 45392-45394, 48681, 48682, 49255, 49269, 51228, 51596, 51598

Flood elevation determinations canceled....44503, 51228

Flood elevation determinations corrected....48682

68 Redesignated from 24 CFR Part 1918....31177

44 CFR—Continued

44 FR Page

Chapter I—Continued

70 Redesignated from 24 CFR Part 1920.................................31177
75 Redesignated from 24 CFR Part 1925.................................31177
80 Redesignated from 24 CFR Part 1930.................................31177
81 Redesignated from 24 CFR Part 1931.................................31177
82 Redesignated from 24 CFR Part 1932.................................31177
83 Redesignated from 24 CFR Part 1933.................................31177
84 Redesignated from 24 CFR Part 1934.................................31177
150—199 (Subchapter C) Heading added.................................25797
150—151 (Subchapter C) regulations redesignated from 45 CFR Chapter XX; nomenclature changes.................................56172
150 Redesignated from 45 CFR Part 2000.................................56172
151 Redesignated from 45 CFR Part 2010.................................56172
200-299 (Subchapter D) Heading added.................................25797
200—205 (Subchapter D) Added; regulations redesignated from 24 CFR Chapter XIII; nomenclature changes.................................56172
200 Redesignated from 24 CFR Part 2200.................................56172
201 Redesignated from 24 CFR Part 2201.................................56172
205 Redesignated from 24 CFR Part 2205.................................56172
300—399 (Subchapter E) Heading added.................................25797
301—310 (Subchapter E) Added; regulations redesignated from 32 CFR Chapter XVIII; nomenclature changes.................................56173
301 Redesignated from 32 CFR Part 1801.................................56173
302 Redesignated from 32 CFR Part 1807.................................56173
303 Redesignated from 32 CFR Part 1803.................................56173
304 Redesignated from 32 CFR Part 1804.................................56173
305 Redesignated from 32 CFR Part 1809.................................56173
306 Redesignated from 32 CFR Part 1806.................................56173
307 Redesignated from 32 CFR Part 1811.................................56173

44 CFR—Continued

44 FR Page

Chapter I—Continued

308 Redesignated from 32 CFR Part 1808.................................56173
309 Redesignated from 32 CFR Part 1812.................................56173
310 Redesignated from 32 CFR Part 1800.................................56173
310.1—310.5 Removed.................................56173
310.6 Introductory text, (a), and (b) removed.................................56173
310.7 Removed.................................56173
310.8 Removed.................................56173
310 Appendix A removed.................................56173

1979–1980

(Regulations published from October 1, 1979 through September 30, 1980)

44 CFR

44 (45*) FR Page

Chapter I

2 Added.................................*41421
3 Revised.................................75062
3.100—3.125 (Subpart E) Added.................................*17148
5 Appendix A added.................................*1422
5.3 (d) and (e) revised.................................*1421
5.26 (a) revised.................................*1422
5.46 (a) revised.................................*1422
5.54 (a) revised.................................*1422
5.55 (e) revised.................................*1422
5.59 Nomenclature change.................................*1422
5.82 Amended.................................*1422
6.2 (n) and (o) revised.................................*17152
6.10 Revised.................................*17152
6.33 (b) revised.................................*17152
6.53 (c) revised.................................*17152
6.55 (a) revised.................................*17152
6.70 (a) and (b) amended; (d) added.................................*17152
6.80 Amended.................................*17152
6.85 Revised.................................*17152
6.86 Added.................................64580
6.87 Added.................................64580
7 Redesignated from 32A Part 165; nomenclature changes...*44575
9 Added.................................76513
  Revised.................................*59526
  Environmental assessment.......*59538
10 Added.................................*41142
11 Added; interim.................................73036
  Added; final.................................*15930
11.30—11.48 (Subpart C) added.................................*63854
12 Added.................................*63480

NOTE: Symbol (*) refers to 1980 page numbers.

44 CFR—Continued

44 (45*) FR Page

Chapter I—Continued

55—84 (Subchapter B) Nomenclature changes corrected....... 62517
55.1 (t) revised; interim................ 64083
(t) revised; final.......................... *13457
55.2 (e) and (f) added; interim..... 64083
(e) and (f) added, final; (e) amended.................................. *13457
55.3 (d) added; interim................. 64083
(d) added; final........................... *13457
55.4 (a) amended; (d) revised; interim.. 64084
(a) amended; (d) revised; final.. *13457
55.5 (b) revised; interim............... 64084
(b) revised; final........................ *13457
55.7 (b) and (c) (2) revised; (c)(4) and (5) added; interim.............. 64084
(b) and (c)(2) revised; (c)(4), (5), and (6) added; final................. *13457
(c)(4) revised.............................. *13457
55.8 Removed; interim................. 64084
Removed; final............................ *13457
55.9 (a) revised.............................. 64084
(a) revised; final......................... *13457
55.12 Revised; interim................... 64085
Revised; final.............................. *13457
61 Appendix B removed............... 62517
61.13 (c) corrected......................... 62517
64.6 Table amended..................... 56355, 57093, 57094, 61000, 61001, 61185, 61186, 63530, 64808, 65753, 68835, 68836, 71831, 71832, 72595, 72596, 76794, 77162
Table amended *3578, 6577, 6579, 6580, 8604, 10346, 12422, 13458, 16185, 16190, 20477, 22941, 26050, 28118, 28119, 28121, 31317, 36401, 37207, 41147, 42290, 42291, 42301, 46395, 46397, 46400, 49930, 49933, 50755, 52283, 55433, 55437, 58530, 58531, 60905, 62987, 64184
Table corrected........................... *26331
65.3 Table amended..................... 61004, 66603, 71835
Table amended............................ *2323, 6582, 16188, 22943, 29022, 39260, 49557, 55439, 60906
65.4 Table revised............. 61005, 67127
Table amended; interim... 67129, 76797
Table amended; interim........... *12420, 18376, 28123
Table amended........................... *36078

44 CFR—Continued

44 (45*) FR Page

Chapter I—Continued

Table amended; interim... *37694, 51212, 58342
65.6 Revised........................ 57095, 75640
Table amended................. 57095, 75640
Revised.. *12421, 26051, 31318, 49570, 52385
Table amended........................... *12421, 26052, 31318, 49570, 52385
65.7 Table revised......................... 61027
Table amended............................ 63531, 68840, 76796
Table amended............................ *3580, 9916, 17999, 27937, 37442, 41149, 48888, 50757, 50758, 62823
65.8 Table revised......................... 61033
Table amended................. 68840, 76797
Table amended........................... *17998, 32001, 48630, 51788
67 Flood elevation determinations.. 56367, 56701, 63531, 63533, 63535, 64422, 65074, 68841, 70469, 72164, 75641, 76282
Flood elevation determinations... *2655, 5714, 5719, 8013, 8989, 9917, 12424, 12438, 13460, 15931, 20803, 20816, 22024, 22028, 27938–27943, 28124, 28127, 29578, 31993, 31994, 32000, 36403, 37209, 43188, 46389, 46402, 46403, 51560, 51789, 51796, 55448, 58342, 58346, 60437, 62065, 62824, 62825
Flood elevation determinations corrected................................ *15930, 25798, 37209, 37210, 43417, 51213, 56062
70 Map amendments... 72178–72180, 75643–75645
Map amendments... *6383–6399, 8605–8624, 15933, 29807–29830, 30071–30076, 38370–38380, 41948, 41949, 48889–48902, 49268, 49269, 50758–50761, 54761–54765, 57399–57401
76 Added; interim........................ *32688
77 Added; interim........................ *50282
80.4 Revised.................................. *41950
80.5 (b)(12) revised...................... *41951
80.6 Amended.............................. *41951
81.2 (a)(2) and (c) revised........... *41951
81.7 (b) amended; (c) revised..... *41951
81.10 Revised................................ *41951

NOTE: Symbol (*) refers to 1980 page numbers.

44 CFR—Continued

44 (45*) FR Page

Chapter I—Continued

82.31 (f) revised....................*41951
83.5 Introductory text revised; (a) removed; (b) and (c) redesignated as (a) and (b); new (a) amended....................*41951
(a) amended....................*41952
83.24 (d) added....................*41952
83.25 Revised....................*41952
83.25a Revised....................41956
150.3 (a)(2) corrected....................62517
200 Nomenclature changes....................62516
201 Nomenclature changes....................62516
205 Nomenclature changes....................62516
205.1—205.16 (Subpart A) Revised....................*53335
205.5 Redesignated as 205.601...*53335
205.6 Redesignated as 205.602...*53335
205.7 Removed....................*45863
205.10 Removed....................*45863
205.11 Removed....................*45863
205.17 Removed....................*45863
205.19 Removed....................*45863
25.21 Removed....................*45863
205.29—205.32 Removed....................*53957
205.33 (a) removed....................*45863
(b) removed....................*53957
205.34—205.38 Removed....................71793
205.45 (e)(1) corrected....................62517
205.46 (c)(3) and (d) corrected.... 62517
205.47 Nomenclature changes corrected....................62517
205.48 (k) corrected....................62517
205.51 Nomenclature changes corrected....................62517
205.52 Removed....................*45863
205.53 Removed....................*53957
205.54 Amended....................45863
Removed....................*53957
205.55 Removed....................*53957
205.56 Removed....................71790
205.57 Removed....................*53957
205.58 Removed....................*53335
205.59 Removed....................*53335
205.60 Removed....................*45863
205.61—205.64 (Subpart E) Removed....................*37440
205.70—205.76 (Subpart E) Added....................*53957
205.72 (f) added; eff. 10-30-80.....64585
205.74 (c)(6) added; eff. 10-30-80....................64585
205.76 (d)(4) added; eff. 10-30-80....................64585
205.65—205.74 (Subpart F) Removed....................71794

44 CFR—Continued

44 (45*) FR Page

Chapter I—Continued

205.75—205.79 (Subpart G) Removed....................*53957
205.80—205.83 (Subpart H) Redesignated as 205.150—205.153 (Subpart I) and revised....................*26053
205.90—205.97 (Subpart F) Added....................71790
205.100—205.104 (Subpart G) Added....................71793
205.110—205.122 (Subpart H) Added....................*45863
205.150—205.153 (Subpart I) Redesignated from 205.80—205.83 (Subpart H) and revised....................*26053
205.200—205.209 (Subpart J) Added....................71794
205.250—205.253 (Subpart K) Added....................*37440
205.400—205.411 (Subpart M) Added....................64809
205.601 Redesignated from 205.5....................*53335
205.602 Redesignated from 205.6....................*53335
206 Added....................75576
300 Added....................*13464
301.2 (e) corrected....................62517
305.2 (b) and (d) corrected....................62517
307.1 (a) corrected....................62517
310 Corrected....................62517
311 Added....................*43200
311.4 Corrected....................*59880
311.9 Corrected....................*59880
320 Redesignated from 32A Part 101 and revised....................*44575
321 Redesignated from 32A Part 102....................*44575
Revised....................*44576
322 Redesignated from 32A Part 103....................*44575
Revised....................*44578
322.3 (b) through (e) redesignated as (c) through (f); new (b) added....................*53479
323 Redesignated from 32A Part 104....................*44575
Revised....................*44579
324 Redesignated from 32A Part 105....................*44575
Revised....................*44582

NOTE: Symbol (*) refers to 1980 page numbers.

44 CFR—Continued

44 (45*) FR Page

Chapter I—Continued
325 Redesignated from 32A Part 106; nomenclature changes... *44575
326 Redesignated from 32A Part 107 *44575
  Revised *44582
327 Redesignated from 32A Part 110 *44575
  Revised *44583
328 Redesignated from 32A Part 111 *44575
  Revised *44584
329 Redesignated from 32A Part 112 *44575
  Revised *44585
330 Redesignated from 32A Part 113 *44575
  Revised 44586
331 Redesignated from 32A Part 134; nomenclature changes... *44575

Chapter IV
Chapter established (transferred from 32A, Ch. VII) *44574
401 Redesignated from 32A Part 701 *44574
402 Redesignated from 32A Part 701A *44574
403 Redesignated from 32A Part 702 *44574

1980–1981

(Regulations published from October 1, 1980 through September 30, 1981)

44 CFR

45 (46†) FR Page

Chapter I
1 Added †32584
2.63 (d)(4) added 74926
2.69 (g) added 74926
2.71 (d) revised; (h) added 74926
9.9 (e)(6) temporarily suspended 79070
9.11 (e)(4) temporarily suspended 79070
  (e)(2) amended †9085
  (e) (1) and (2) revised; interim †24954
10.8 (c)(2)(vii) (K), (L), and (M), and (viii) added †2049
11.30 Revised †46934
11.34 Revised †46934
11.36 Revised †46935

44 CFR—Continued

45 (46†) FR Page

Chapter I—Continued
11.37 Revised †46935
11.38 Revised †46935
11.39 Revised †46935
11.41 Revised †46935
11.42 (b) revised †46935
11.45 Revised †46935
11.47 Revised †46935
11.49 Added †46935
59.1 Amended †1274
60.3 (c) introductory text, (7) and (8) revised; (c) (1), (2), and (3), and amended; (c)(11) added †1274
61.9 Revised; eff. 10-1-81 †42675
61.10 Revised †13514
61.11 Heading, (b) introductory text, and (d) revised; (e) added †13514
62.3 (b) and (d) amended †13515
62.6 Revised †13515
62.7 Removed †13515
64.3 (a)(1) amended †1274
64.6 Table amended 66015, 66455, 69448, 69450, 70451, 72659–72661, 74927, 77031, 82260–82262, 84789, 84791, 85025
  Table amended †3212 3215, 7351, 7352, 7354, 11814, 11817, 11824, 13692, 13694, 14129, 15267, 15269, 17781, 18712, 18714, 19474, 19476, 20175, 21774, 22377, 23744, 26306, 26772, 26775, 27124, 28443, 29940, 29943, 30627, 31644, 32240, 32242, 33275, 35262, 37653, 37656, 39597, 40694, 40695, 41501, 41502, 43679, 45763, 45767, 47071, 47226, 47228
  Table corrected 79810
  Table corrected †17282, 19474, 20999, 22586
65.3 Table amended 69453, 72164, 79458
  Table amended †7358, 11819, 15143, 18708, 21776, 26778, 32245, 39599
65.4 Table revised 66017
  Table corrected 71803
  Table amended; interim 79456
  Table amended; interim †1737
  Table amended †32248
  Table amended; interim †37663

Note: (*) refers to 1980 page numbers.

Note: Symbol (†) refers to 1981 page numbers.

44 CFR—Continued

45 (46†) FR Page

Chapter I—Continued

65.6 Revised....................†13695, 20177, 26776, 46810
65.7 Table amended..........65219, 82264
Table revised.................... 66128
Table amended.................... †1275 7365, 13697, 17783, 18546, 26062, 27942, 35263, 46936
65.8 Table revised.............66016, 66150
Table revised.................... †7366
Table amended ....†19477, 26776, 45769, 47454
66.1 (c)(4) added; interim..........†35922
66.4 Revised; interim.................. †35922
66.5 Revised; interim.................. †35922
66.6 Removed; interim............... †35923
67 Flood elevation determinations..............................69457, 69889, 69902, 70452, 73669, 73682, 79466, 79479, 82935, 84062, 84792
Flood elevation determinations corrected..............................67666, 69903, 69904, 73668, 79070, 79810
Flood elevation determinations..............................†1275, 7367, 7368, 7987, 7996, 9586, 9587, 13697, 13709, 13710, 18547, 18698, 20178, 20192, 20194, 21000, 21011, 21605, 21779, 26308, 26309, 26323, 26333, 26335, 27942, 27943, 28419, 30629, 31263, 31645, 31647, 37664, 37666, 37670, 41064, 41066, 41075, 42867, 43047, 46937, 46938, 46940, 46948

44 CFR—Continued

45 (46†) FR Page

Chapter I—Continued

Flood elevation determinations corrected.............................. †13721 20999, 28656, 30500, 37683, 39829, 46936
70 Map amendments.........82634-82652
Map amendments..............†9085-9098, 19478, 20194-20198, 22379, 22380, 23420-23427, 26645-26649, 28432-28442, 37683-37692, 41075, 41076
76 Added; final.............................. 79072
81.1 (b) revised..............................67667
200.2 (g) revised; (i) amended....†45138
200.3 Amended............................ †45138
200.26 (b) amended...................... †45138
200.30 Amended.......................... †45138
200.39 Amended.......................... †45138
201.2 (a) and (b) amended..........†45138
205.1 Amended............................ †45138
205.2 (a)(3) revised......................†45138
205.76 (a)(19) revised..................†32588
(d)(4) amended.......................... †45138
205.91 (a) amended...................... †45138
205.100 Amended........................ †45138
205.111 (c) removed.................... †45138
205.402 (d) amended.................... †45138
205.403 (b)(3) amended............... †45138
205.407 (d) amended.................... †45138
205.408 (d)(2) and (e) amended ....†45138
300.3 (b) nomenclature change.†47455
300.5 (i) (3) and (10) nomenclature change..............................†47455
300.6 Added..................................†47455
302 Revised.................................... 64914
302.3 (g) added...............................74928
332 Added.. †2350
351 Added; interim..........................69905
360 Added..†1271
Technical correction................... †9586

Note: Symbol (†) refers to 1981 page numbers.